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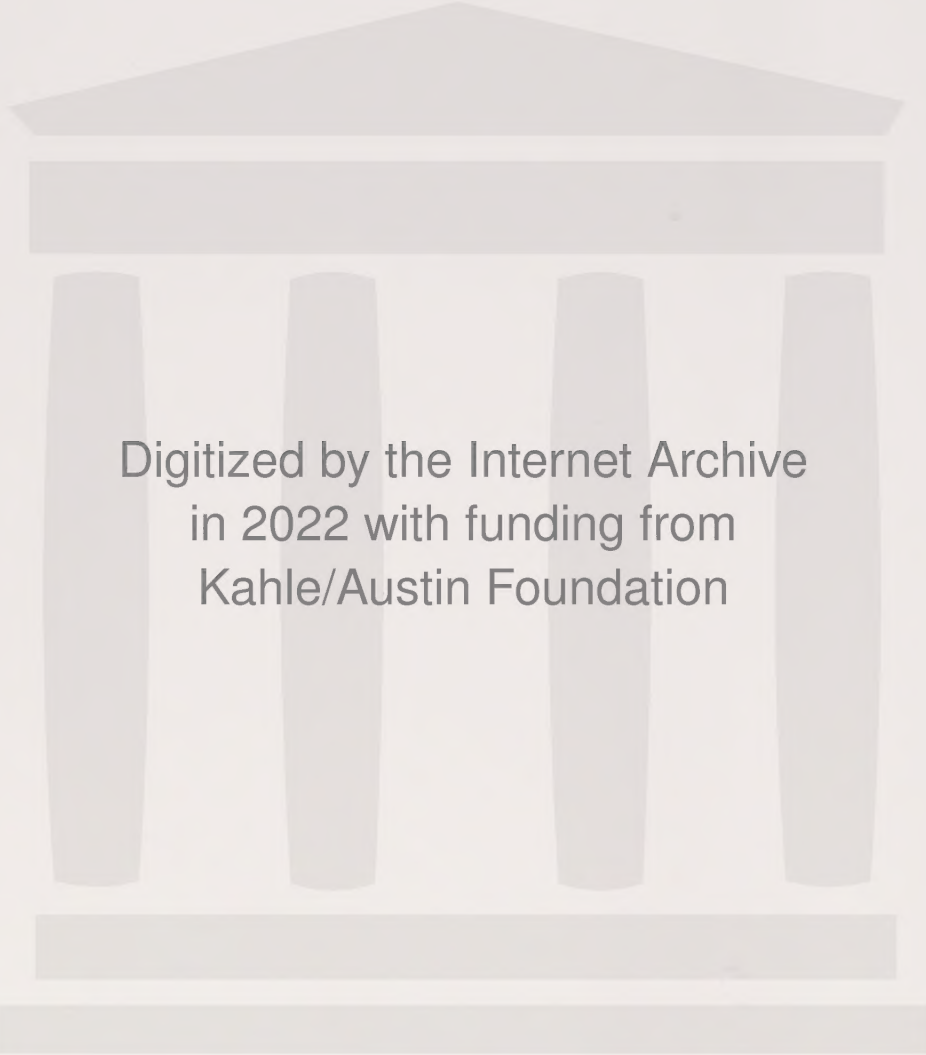
Making of the Modern Law
Print Editions

Legal Treatises, 1800-1926

A course of legal study : addressed to students and the profession generally. Volume 2 of 2

David Hoffman





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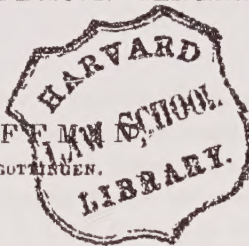
ADDRESSED TO

STUDENTS AND THE PROFESSION GENERALLY,

BY

DAVID HOFFMAN

JUR. UTR DOCT. GOTTINGEN.



Second Edition.

RE-WRITTEN AND MUCH ENLARGED

IN TWO VOLUMES

VOL. II

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A COURSE
OF
LEGAL STUDY.

PARTICULAR SYLLABUS.

TITLE VIII.

‘Equidem contra existimo, iudices, cū in omni genere ac varietate artium, etiam illarum, quæ sine summo otio non facile discuntur, Cn Pompeius excellat, singularem quandem laudem ejus et præstabilem esse scientiam, in fœderibus, pactionibus, conditionibus, populorum, regum, exterarum nationum, in universo denique belli jure ac pacis’
Cic Oral Pro L Corn Balbo. Cap VI

THE LAW OF NATIONS

(Note 1.)

1. Mackintosh's Introductory Lecture on the Law of Nature and Nations.
2. Chitty's Law of Nations. (Note 2)
- * 3. Marten's Compendium of the Law of Nations. (Note 3.)
4. Vattel on the Law of Nature and Nations.
(Note 4)
- * 5. Du Ponceau's translation of the first book of Bynkershoek's 'Questiones Juris Publici,' being a treatise on the Law of War.
(Note 5)

- e. 6. The following select chapters in Grotius
on the Rights of War and Peace:

Chap. 18. 'Of the Rights of Embassies.'

BOOK II

Chap. 6. 'Of the Right to things taken
in war.'

Chap. 17. 'Of Neuters in War.'

Chap. 20. 'Of the Public Faith,' &c.

Chap. 21. 'Of Faith during War, Tru-
ces, Safe Conduct, and
Redemption of Prisoners.'

BOOK III.

- * e. 7. Schlegel upon the Visitation of Neutral
Vessels under convoy *Translated from the
Danish.*
- e. 8. War in Disguise, or the Frauds of Neutral
Flags. *Lon. 1805. Reprinted N. York. 1806.*
- e. 9. An Answer to 'War in Disguise,' or Re-
marks upon the Doctrine of England,
concerning Neutral Trade.
- * E. e. 10. An Examination of the British Doctrine,
which subjects to capture a neutral
trade, not open in time of peace, 1808.
- * E. e. 11. The Earl of Liverpool's Discourse on
the Conduct of the Government of
Great Britain in respect to Neutral
Nations. 1757.
- * E. e. 12. Baring's Inquiry into the Causes and
Consequences of the Orders in Council,
and an examination of the conduct of
Great Britain towards the neutral com-
merce of America? *London 1808.*

NOTES ON THE EIGHTH TITLE.

(Note 1.) 'EQUIDEM CONTRA EXISTIMO,' &c.—Cicero, in common with the learned of the ancient world, who knew the difficulties and vast extent of the science of national law, readily accorded the most elevated station in the empire of knowledge to him, who had made himself familiar with the laws which regulate nations during a state of war or peace Pompey was distinguished in every science and art, but his greatest merit, and the brilliancy of his fame, rested on his acquaintance with this august system: '*singularem quandem laudem ejus et præstabilem esse scientiam, in fœderibus, pactonibus, conditionibus, populorum, regum, exterarum nationum; in universo denique belli jure ac pacis.*'

A knowledge of this law is essential to legal pre-eminence. However learned in the doctrines of the common or municipal law an advocate may be, he can never maintain a lofty character, if when called on, he shrinks from the discussion of questions involving nice and difficult points of natural jurisprudence, or of conventional and diplomatic law. The liability to be thus called on is principally confined to lawyers resident in the commercial cities, or near the sea-board. Here the most important questions of national, maritime, admiralty, and Roman law, may arise, and they so are intimately blended, that no one can calculate on the efficiency of his knowledge of either of these branches of law, who has not made himself somewhat acquainted with the remaining three.

The Law of Nations may be defined a system or body of rules, ordained by nature, and the consent, express or implied.

of sovereign states, for the guidance of international conduct. Thus contemplated, it embraces not only such rules as are dictated by the general principles of natural law applied to nations, considered as individuals in a state of nature, but also such voluntary, customary, and conventional obligations, as are consistent with this law of nature, though not prescribed by it. Hence the code of national jurisprudence is susceptible of four great divisions.

1. The implied, universal, or natural Law of Nations.
2. The voluntary Law of Nations.
3. The customary Law of Nations, and
4. The conventional, express, or particular Law of Nations.

In the first are comprehended the principles of natural law, applied to nations as if they were individuals in a state of nature. The second embraces the decisions or rules of natural jurisprudence, changed and modified in reference to the aggregate and political character of the subject to which they are applied.

In the third division we find such laws or rules, as derive their obligation from long and established use. It is founded on tacit consent. The fourth and last division includes the laws or obligations which flow from express agreement. Like the third it is not a *universal* law, but obliges only the *particular* nations that have contracted. 'These three last kinds of the law of nations,' says Vattel, 'viz. the voluntary, conventional, and customary, together compose the Positive law of nations. For they all proceed from the *volition* of nations; the voluntary law, from their presumed consent; the conventional law, from an express consent; and the customary law, from a tacit consent; all of which should be carefully distinguished from the natural or necessary law of nations.'

✓ Notwithstanding the great number of treatises on the laws of nations, it has been very justly observed by Chancellor Kent, that 'there is no work which combines, in just proportions, and with entire satisfaction, an accurate and comprehensive view of the *necessary* and of the *instituted* law of nations, and in which principles are sufficiently supported by argument, authority, and examples.'^{*} The nine lectures of this enlightened jurist, which occupy the first two hundred pages of the first volume of his Commentaries, present one of the most beautiful, learned and valuable outlines to be found, perhaps, in any language, on this interesting subject. It scarce fell, however, within the scope of the learned author's design, and properly we think, even to touch upon the internal, or necessary natural law of nations; for this is little else than natural law, as we find it applied to individual conduct, in the various treatises on that subject, and on ethics. The pages of Puffendorf, and of Wolf, or at least those of Rutherford and of Burlamaqui, are presumed to be familiar to the student, before he takes up the works which treat of the law of nations.

In addition to the works enumerated in our syllabus, or alluded to in the subsequent notes, the student, in after life, may have occasion to consult, at least in the way of reference, a variety of treatises, &c. on public and international law. We have given the titles of the principal works under this head, near the close of the present title; and also under the head of Legal Bibliography, q v. We have been the more ample in our enumeration of the titles of books, in most of the departments of our science, as the researches of the learned, as well as of students, are sometimes retarded from a want of even this species of acquaintance with books.

* 1 Kent's Comm. 18, 2d edition.

(Note 2.) CHITTY'S LAW OF NATIONS.—This small volume forms a very proper commencement of the study of the voluntary, customary, and conventional Law of Nations, after the introductory lecture of the late sir James Mackintosh. It was published in London, 1812, and in a few months after, in Boston. Mr. Chitty has shown in this essay the versatility of his powers, and the ease with which he passes from a consideration of one legal subject to another. There is no depth of learning, but great clearness in the arrangement of his topics, and concinnity of style and thought

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(Note 3.) MARTENS' COMPENDIUM, &c.—This small volume contains a great mass of learning on that practical and most important branch of the law of European nations, which is founded on treaties and customs, and which has been denominated by Vattel and others, the Positive law of nations. It is among the most valuable of the productions of this distinguished professor of public law, and for learning, systematic arrangement, and accuracy of definition, is a work of singular excellence. Appended is a list of treaties, conventions, compacts, declarations, &c. of the modern nations of Europe, from the year 1731 to 1802, with references to the principal works in which they are to be found. This, to use the language of the translator, 'is perhaps the most ample, the most accurate, and of course the most useful list of treaties, &c. that is to be met with in any work whatever.' It was published at Göttingen in 1789, and was translated into English by William Cobbett, in the year 1802. George Frederick Von Martens was also the author of a valuable collection of Treaties of Peace and of Alliance, in fourteen volumes, and of another work entitled, a Course of Diplomacy, in three volumes. At the congress of Vienna he prepared the Reports of the conferences between the ministers; and was subsequent-

ly sent as minister from Hanover to the diet at Frankfurt, where he died. He was born at Hamburg, 22nd February, 1756, and died in 1816.

(Note 4.) VATTEL ON THE LAW OF NATURE, &c.—This has been, in most countries, a very popular work on the law of nations. Notwithstanding many novel and untenable positions of the new philosophy are to be found in it, and its opinions on the subject of religion and religious establishments, are to be unhesitatingly condemned as unorthodox, we still perceive so much merit in the production at large, that we do not hesitate to advise its perusal. Vattel is generally a perspicuous and elegant writer, and this work contains so much useful matter, and is so universally read, that to be unacquainted with it would indicate either a want of industry, or an unwarrantable fastidiousness of opinion. In the treatment of his subjects, however, his fullness sometimes degenerates into diffusion; and his reader has arrived at the conclusion, long before his author is willing to part with his demonstration.

The preface to this work deserves particular attention, as presenting a clearer idea or definition of the law of nations than had before been given. [Vide (note 1) on this title.] Vattel's chapter on '*things odious and favourable*,' a topic connected with the interpretation of laws and contracts, is so far from worthy of that ingenious author, as to have filled us with surprise, that so much contradiction, and even absurdity, should have fallen from his pen.

The work was published in 1758, under the title of *Droit des Gens, ou Principes de la Loi Naturelle*, and was translated into English in 1760. The last Paris edition is by Janet and Cotille, 1820. His system is mainly founded on that of Wolf, whose *Institutiones juris naturæ et gentium* appeared in 1754.

He differed, however, in various points, from his master, which induced him to publish in 1762, his *Questions sur le Droit naturel*, in which his peculiar views are set forth. The student will bear in mind that there is a greatly improved London edition, 1833, by Mr. Chitty, with copious notes, and which has been recently republished. *Philadelphia*, 1835. Emer de Wattel or Vattel, was born at Naufschâtel in April, 1714, and ~~X~~ died in December, 1767.

(Note 5.) DU PONCEAU'S BYNKERSHOEK.—This valuable accession to our English law library was published in 1811, in an octavo volume of two hundred and eighteen pages. It is also to be found in the third volume of Hall's Law Journal. Cornelius Van Bynkershoek was a civilian of the most distinguished eminence. After practising with honour as a juriconsult at the Hague, he removed to Leyden, where he became professor of law, and subsequently, president of the council of Holland. His works were published at Geneva in 1761—at Leyden, in 1752 and 1766. For a list of his works contained in seven volumes, vide post, Title X. Bynkershoek was born at Middleburg in 1675, and died in 1743.

✓ LIST OF WORKS FOR OCCASIONAL REFERENCE ON PUBLIC AND INTERNATIONAL LAW.

[~~§~~ For the bibliography of various cognate subjects, and for similar lists of works for occasional reference, vide, in this Course, Auxiliary Subjects, Division III Sec 'Bibliography'—also, Title VI 'Lex Mercatoria.' Title IX. 'Admiralty and Maritime Law, and ante p 333 to 342']

1. Archives politiques et diplomatiques, ou recueil de pièces officielles, mémoires et autres morceaux historiques, inédits ou peu connus, relatifs à l'histoire des 18^e et 19^e e Siècles, par F.Schoell. *Paris*, 1819, 3 vols.
2. Burke's Works, *passim*.

3. Bassompierre, Ambassades en Espagne l'an 1621, en Suisse l'an 1625, en Angleterre l'an 1626 *Cologne*, 1668, 1744.
4. Causes célèbres du droit des gens, redigées par Ch de Martens. *Leipsic*, 1827.
5. Cours de style diplomatique, par H. Meisel. *Paris*, 1826
6. Code diplomatique des Aubains, ou du Droit conventionnel entre la France et les autres puissances, relativement à la capacité réciproque d'acquérir ou de transmettre les biens, meubles ou immeubles par actes entre vifs, par disposition de dernière volonté et par succession ab intestat par M. Gaschon *Paris*, 1818, 1 vol 8vo.
7. Collection complète des ouvrages publiés sur le gouvernement représentatif et la constitution actuelle, par M. B. Constant. *Paris*, 1817, 4 vols 8vo.
8. Considérations historique et diplomatique sur les Ambassades des Romains, comparées aux modernes; par M Weiske, 1834.
9. Droit des gens moderne de l'Europe, par J. J. Kluber. *Paris*, 1828.
10. De la Liberté des Mers, par B. Barrière. *Paris*, 1798, 3 vols. 8vo.
11. De la Saisie des Bâtimens Neutres, par Hubner. 1759, 2 vols. 12mo.
12. Du Commerce des Neutres en temps de guerre, par Lampredi; traduit de l'Italien, par M. Peuchet, 1802, 8vo.
13. Diplomatic Correspondence of the American Revolution, by Jared Sparks, 12 vols. *Boston*, 1829, 1830.
14. Diplomacy of the United States of America. *Boston*, 1826.
15. Elémens de législation naturelle, par M. Perreau, 1807.
16. Gebhardt's State Papers relating to the diplomatic transactions between the American and French governments, from 1793 to 1800. *London*, 1816.

17. Harrington's Works, particularly his *Cceana*, and Political Aphorisms, 1 vol fol 1656, 1700, *Tindal's ed.* 1737, *Burck's ed.*
18. Historia del derecho natural y de gentes, por Marín, 1800
2 vols 8vo
19. Histoire générale et raisonnée de la diplomatie française, depuis la fondation de la monarchie française jusqu'à la fin du règne de Louis XVI; avec des tables chronologiques de tous les traités conclus par la France; par M de Flassan. *Paris*, 1811, 7 vols. 8vo.
20. Institution du droit de la nature et des gens, par Gérard de Rayneval. *Paris*, 1803.
21. Jenkinson's Collection of Treaties, from the treaty of Munster, in 1648, to the treaties of *Paris*, in 1763, 3 vols.
22. Ker's Memoirs of his Secret Negotiations in Scotland, England, the Courts of Vienna, Hanover, &c., 1726, 3 vols. 8vo
23. Locke's Treatises on Government.
24. Le Droit des gens Européen, trad de l'Allemand de Schmals, par le comte de Bohm. *Paris*, 1823
25. Letters of Sir Dudley Carleton during his embassy in Holland, 1616, 1620
26. L'Ambassadeur et ses fonctions, par M. de Wicquefort, 1681, 2 vols. 4to 1716, 1 vol. fol translated by Digby
27. Mackintosh's Introductory Lecture on the Laws of Nature and Nations.
28. Manuel Diplomatique, ou précis des droits et des fonctions des agens diplomatique, suivi d'un recueil d'actes et d'offices pour servir de guide aux personnes qui se destinent à la carrière politique, par le baron Charles Martens. *Paris*, 1822

29. Machiavel's Prince; Political Discourses upon Livy, Letters on Matters of State.
30. Manuel du publiciste et de l'homme d'état, contenant les chartes et les lois fondamentales, les traités et les conventions, &c relatifs aux constitutions politiques et aux intérêts généraux des états de l'Ancien et Nouveau Monde, par M. Isambert. *Paris*, 1826, 4 vols. 8vo.
31. Mémoires du maréchal de Bassompierre. *Cologne*, 1665
Paris, 1802, 1 vol. 8vo
32. Mémoires touchant les Ambassadeurs, et les Ministres publics, par M. de Wicquefort, 1676, 12mo
33. Paine's Rights of Man, and Common Sense. *Philadelphia*, 1776.
34. Précis de la Science du droit naturel et du droit des gens, par M. Malpeyre. *Paris*, 1829.
35. Précis du droit des gens moderne de l'Europe, par Ch. de Martens, 1821.
36. Principes du droit public constitutionnel, administratif, et des Gens, ou Manuel du Citoyen, sous un gouvernement représentatif, par M. Ferriera *Paris*, 1834.
37. Richelieu Cardinal, duc de, lettres, où l'on a joint des mémoires et instructions secrètes de ce ministre pour les ambassadeurs de France en diverses cours. *Paris*, 1696, 1790.
38. Sidney's Discourses on Government. *London*, 1698, 1772.
39. Sir Francis Walsingham's Complete Ambassador *London*, 1665.
40. Thomæ Rymeri Fœdera, Conventiones, &c. 10 vols. fol
3d ed. 1739
- 41 Tables des traités de paix, d'alliance, de commerce, de limites, de garantie, etc. entre la France et les puissances étrangères, depuis la paix de Westphalie jusqu'à nos

jour, suivie d'un Recueil de traités et d'actes diplomatiques qui n'ont pas encore vu le jour (depuis, 1648, jusqu'à 1787;) par Guil. Koch. 1802.

42. Ward's Foundation and History of the Law of Nations in Europe, from the time of the Greeks and Romans to the age of Grotius. *Dublin*, 1795

43. Wachsmuth, Jus Gentium quale obtinuerit apud Græcos ante bellorum cum Persis gestorum initium *Kiel*, 1822, 1 vol. 8vo

X

PARTICULAR SYLLABUS.

TITLE IX

'Maritime Law, and the principles of which it is constituted, are not composed of fanciful opinions, and doubtful systems. This law rests on the general basis of the law of nature and nations, on the positive regulations of the conventional law of Europe, and on those usages established among nations by necessity, the utility of which has been proved by long experience, and on which time has impressed a venerable character that commands our respect. In this manner, many rules that derive the force of legal authority from the tacit consent of nations, have been insensibly established. It is this tacit consent, that gives validity, and binding force to the European law of nations'—AZUNI

'The Maritime Law is not the law of a particular country, but the general law of nations'—LORD MANSFIELD

• THE MARITIME AND ADMIRALTY LAW

(Note 1)

1. Azuni on the Maritime Law of Europe.

(Note 2)

2. Of the Court of Admiralty. [1 vol. Bacon's *Abridgment*]

3. Brown's Admiralty Law. [The second vol. of his work entitled, 'A compendious view of the Civil Law, and of the Law of the Admiralty']
(Note 3.)

- 4 De Lovio vs. Boit, 2 Gallison's Reports, 435. (*Note 4.*)
- E. e. 5. Wheaton's Digest of the Law of Maritime Captures and Prizes. (*Note 5.*)
- E. 6. Rayneval De la Liberte des Mers. [*The first volume only*] (*Note 6.*)
- E. 7. Barton's Dissertation on the Freedom of Navigation, and Maritime Commerce. (*Note 7.*)
- E. e. 8. De Martens' Essay on Privateers, Captures, and Re-Captures. [*Horne's translation, published 1801.*] (*Note 8.*)
- e. 9. Pothier's Treatise on Maritime Contracts of Letting to Hire. [*By Caleb Cushing, Esq. with Notes, and Life of the Author, Boston, 1821*] (*Note 9.*)
- E. e. 10. Vanheythuysen's Essay upon Marine Evidence.
- e. 11. Clerk's Praxis Supremæ Curiae Admirali-tatis. [*Translated by J. E. Hall, Balt 1809*] (*Note 10.*)
12. Jacobson's Laws of the Sea, with reference to Maritime Commerce during peace and war. [*From the German of F. J. Jacobson, Altona, 1815, by Wilham Fick, Esq. with Notes, Baltimore, 1818*] (*Note 11.*)
- E. e. 13. Peters' Admiralty Reports. (*Note 12.*)
- E. e. 14. Bee's South Carolina Admiralty Reports.
- e 15 ¶ The following Select Cases on Admiralty and Maritime Law, from the Reports of *Gallison, Mason, Wheaton, and Peters.*

GALLISON.

- 1st vol.—The Alligator, p. 145. Schooner Rapid, p. 295
The Grotius, p. 503 The Julia, p. 594.
2d vol.—The Invincible, p. 41. Maisonnaire v. Keating, p.
341. The Jerusalem, p. 345.

MASON

- 1st vol.—Burke v. Frevett, p. 96. The Anne, p. 508
2d vol.—The United States v. La Jeune Eugenie, p. 409.
3d vol.—Willard v. Dorr. p. 91, 161 The Packet, p. 255, 334.
Chamberlain v. Chandler, p. 243.
4th vol.—Ship Mentor, p. 84. Plummer v. Webb, 380.
5th vol.—The Triton, p. 465. United States v. Ruggles, p. 192.

WHEATON

- 1st vol.—The Mary and Susan, p. 25. The Aurora, p. 96.
The Nereid, p. 171 The Invincible, p. 238. The
Commercen, p. 382.
2d vol.—The Anna Maria, p. 328. The Eleanor, p. 345.
3d vol.—The Friendschaft, p. 14. The Anne, p. 435. The
Amiable Nancy, p. 546.
4th vol.—The Divina Pastora, p. 52. The Estrella, p. 298.
The General Smith, p. 438.
5th vol.—U. States v. Wiltberger, p. 76. La Amstad. p. 385.
6th vol.—The Amiable Isabella, p. 1. The Bello Corunnes,
p. 152. The Collector, p. 194.
7th vol.—The Gran Para, p. 471. The Santa Maria, p. 490.
The Arrogante Barcelones, p. 496.
8th vol.—La Nereyda, p. 108. The Sarah, p. 391.
9th vol.—The Apollon, p. 362. The St. Iago de Cuba, p. 409.
The Monte Alegre, p. 616. The Fanny, p. 658.
10th vol.—The Antelope, p. 66. The Dos Hermano, p. 306.
The Santa Maria, p. 430. Manro v. Almeida, 473.
The Gran Para, p. 497.

11th vol.—The Mariana Flora, p. 1. Chace v. Vasques, p. 429.

12th vol.—The Palmyra, p. 1. Ramsay v. Allegre, p. 611.

PETERS

5th vol.—Sheppard et al v Taylor et al, p 675.

7th vol —Peyreoux et al v Howard, p. 324. ✕

* MISCELLANEOUS.

E. e. 1. Postlethwayte's Dictionary. '*Sea, Dominion of.*'

e. 2. Duke of Newcastle's Letter to M. Michell,
in answer to the Prussian Memorial.
[*Collectanea Juridica*, vol i. 129.]

e. 3. Sir William Scott and Sir J. Nicholl's
Communication to Mr. Jay, on Proceed-
ings in Prize Causes. [*Vide American edi-
tion of Chitty's Law of Nations, Appendix; or
Wheaton's Digest of Mar. Law, App. No. 1*]

E. e. 4. Dr. Croke's Opinion, in the case of the
Herkimer, on the rights and powers of
captors and prize agents over captures
and proceeds, before final sentence.
[*2 Hall's Law Journal*, 133.]

E. e. 5. Judge Davis's Opinion on a claim for wages
by the representatives of deceased Sea-
men. [*2d Hall's Law Journal*, 359]

E. e. 6. Dr. Croke's Opinion in the case of the
Orion. [*4 Hall*, 505.]

e. 7. Translation of the 5th title of the 47th
book of the Digests, entitled, 'Of the
Action of Theft against Mariners, &c.
[*2 Hall*, 250.]

- e. 8. Translation of the 1st title of the 14th book of the Digests, entitled 'Of the Responsibility of Ship Owners for the acts of the master, and of the action called *'Actio Exercitoria.'* [2 *Hall*, 462]
- e. 9. Translation of the 2d title of the 22d book of the Digests, entitled 'Of Maritime Loan.' [3 *Hall*, 151.]
- e. 10. Translation of the 273d and 287th chapters of the *Consolato del Mare*. [4 *Hall*, 299, 161. Or *vide Robinson's Collectanea Maritima*]
- e. 11. Sir Leoline Jenkins's Argument before the House of Lords in the reign of Charles II. on a bill to ascertain the jurisdiction of the Court of Admiralty.
- E. e. 12. Wheaton's Appendixes to his Reports of Cases in the Supreme Court of the United States. [*Vide vol. i. Note 2; vol. ii. Note 1, vol. v. Note iii., vol. vi Notes ii. iii. iv v.*]
- 13. Dr. Cooper's Opinion 'On the effect of a Sentence of a Foreign Court of Admiralty.' [*Philadelphia*, 1810.] (*Note 13.*)
- e. 14. Judge Ware's learned Opinions on Admiralty Jurisdiction—Ship Master's claim to wages out of the merchandize assigned by the owner of ship and cargo to creditors; and of the Seamen's lien for wages on the freight, vessel and cargo, though in the hands of assignees. [*Vide American Jurist*, vol. iii. 26, 40.]

✂ The Sources of Maritime and Admiralty Law, for occasional reference will be found in Note 14

NOTES ON THE NINTH TITLE. ✓

(Note 1) OF ADMIRALTY AND MARITIME JURISPRUDENCE

The subject of admiralty and maritime jurisprudence is so important and extensive in nations having an easy access to the ocean, that we find it very prominent in the law of such countries, whenever the occupation of arms has ceased, from any cause, to monopolize the public mind. People who are not engaged in destroying each other, are sure to cultivate the earth; to fashion its products by various manipulations, with the view of interior trade and commerce, and, if the sea be near them, they become industriously occupied in maritime pursuits; which, in turn, need the regulation of fixed laws, and of defined tribunals for their enforcement. It is quite certain that a large part of our country must ever remain essentially maritime. We border on the ocean more extensively than any other nation of ancient or modern times. Our internal resources are greater, the means of transporting the products of agriculture and of manufacture, from remote interior places to the ocean, are vastly beyond any thing hitherto known. from all of which we infer that maritime jurisprudence (if not already so) is destined to become in our country a much more extended and perfected system than yet exists. These views we cannot regard as merely prospective, and anticipative; we have already done in this country more to fashion the elements of this branch of jurisprudence into a symmetrical whole, than any other nation. It is true, indeed, that we have had the learned labours of the whole world at our command; but it is equally true that the nations of Europe

have not reciprocally profited by what has been respectively effected by each. The United States, on the contrary, in their legislation, their judicial investigations and decisions, and in the researches of their jurisconsults, have sought for light and improvements from every source, exempt from narrow jealousies, and untrammelled by the customs, or by the binding force of the decisions of former days. Were the maritime and admiralty law of this country, (practical as well as theoretical) carefully collected, and digested, it would form, as we think, a code more free from incongruities and defects, than could be extracted from the like sources of any other country. We cannot enter into any defence of this opinion, as we find our volume is swelling beyond the compass originally designed; and we, therefore, say to those who may be sceptical on this point, *study the American law of this subject.*

(Note 2.) AZUNI ON THE MARITIME LAW OF EUROPE.— In this very interesting work are disclosed, in a lucid, systematic, and erudite, but perhaps too oratorical manner, the reciprocal rights and duties of nations in relation to maritime commerce. This highly important branch of international law is, perhaps, no where treated with so much ability, and certainly by no one with more scientific regularity and fulness. Perhaps in the whole Bibliotheca Legum, there is no work which points out so particularly the sources of information, or what has been called the literature, of maritime jurisprudence, as this work of M. Azuni. As an elementary work, presenting a clear and comprehensive outline of a very extensive subject, no work with which we are acquainted, can be compared to it. His translator, William Johnson, esq. of New York, to whom the profession are much indebted, remarks that, 'Azuni is the first person who has digested all the principles of maritime law into

a regular system. He appears to have been well fitted by inclination and study, as well as by education and long experience, to execute a work, which required various and extensive learning, sound judgment, and a liberal and philosophical spirit. His book, therefore, may be regarded as new, and one that bids fair to become a standard authority on all questions connected with the laws of maritime commerce and navigation.⁷

The student will find this work highly valuable also, on account of the numerous biographical and bibliographical notices by the author and his translator.

Mr. Johnson's translation was published at New York in 1806, in two volumes, 8vo.

(Note 3) BROWN'S ADMIRALTY LAW —The student is referred to Note 10, on Title X. of this Course, for our remarks on Dr Brown's *Compendious View of the Civil Law*, and of the Law of the Admiralty. ✓ X

(Note 4.) DE LUVIO v. BOIT —We specially notice this individual case, and assign to it an early place in our Syllabus, as it is a very remarkable one, being in truth a learned and elaborate essay on admiralty jurisdiction, and one of the most elementary and luminous views of the subject extant. ✓ The learned judge there decides that a policy of insurance is a maritime contract, and as such is also embraced by the admiralty jurisdiction of the United States' District Courts. In vindication of this doctrine he traces, with great minuteness, the history of this jurisdiction from the earliest periods, and calls to his aid all the learning of the British, continental and American legists. This great opinion ought to be thoroughly studied by those who aim at solid attainments in this department of the law

(Note 5.) WHEATON'S DIGEST OF MARITIME LAW.—It is matter of no little surprise that in England, where nearly every legal topic has been discussed with much learning and ability, and the law of most subjects perspicuously arranged, no regular treatise or digest on the subject of *maritime captures* should have been written; especially when we consider the vast importance and interest of this portion of legal science to the British people generally. Since the time of Bynkershoek and Lee, his unworthy translator, this law has been much investigated and improved by the English courts of judicature; and a noble superstructure has been elevated on foundations established by them. It is with real satisfaction that we recommend this production, the growth of our own soil, as it is executed with ability and faithfulness, and cannot fail in proving eminently serviceable to the profession, as the law of this subject, prior to this work, is chiefly to be found in the voluminous productions of the publicists of different nations and languages, and the numerous judicial reports of various countries. Every source of useful and accurate information has been resorted to by this writer, and the work is luminous and sufficiently learned. We consider it decidedly the best American law treatise that has come to our knowledge, and no doubt will receive, as it certainly merits, a welcome reception from our trans-atlantic brethren.

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(Note 6.) RAYNEVAL DE LA LIBERTE DES MERS.—We consider this a highly respectable production, and fully entitled to an attentive perusal, although it has many defects, and some opinions to which we cannot subscribe. Many of the questions so often discussed with ability by preceding writers, as the *right of search, contraband, enemy property on board of neutrals, right of blockade, freedom of navigation, &c.* are ingeniously and satisfactorily treated by him, and in a manner

by no means superseded by the other writers whom we have designated in this title. We have recommended only the first volume of this work, as the student can reap but little useful instruction from a discussion on the long agitated and; we may now say, exploded doctrine of *mare clausum*. In the pages of Selden, Grotius, Bynkershoek, Gallani, Sarpi, Puffendorf, Lampredi, Boxhoeve, Pontanus, Wolfius, Heineccius, Pacius, Granswinkel, Strauchius and others, much time has been wasted in elaborate, learned, and ingenious argumentation on *mare clausum* and *mare liberum* and as the interest of the question has considerably subsided, we are of opinion that as little time as possible should be consumed in perusing the written labours of these 'warriors with the pen'. The student in the course of his references, and in perusing the books, &c. here set down, will acquire as much knowledge on this point as the subject merits. The second volume of M. De Rayneval's work is principally on this subject, and others of little interest to us. Azuni, in his first volume, part 1st, chapters 2d and 3d, presents a luminous view of this subject, they contain, perhaps, nearly all that an American student needs. M. Gérard de Rayneval is also the author of a valuable work on the Law of Nature and of Nations, 1 vol. 8vo. Paris, 1803. M. Dupin, speaking of this work, says, 'C'est un grand avantage de pouvoir joindre des méditations d'un homme qu'une longue pratique a éclairé. On a cet avantage dans la possession du livre de M. Gérard de Rayneval. Il a toujours été attaché aux affaires étrangères, et à la diplomatie Française. Vide Prof. d'Avocat, vol. 2, p. 36.

(Note 7) BARTON'S DISSERTATION, &c. — This volume ✓
appertains, perhaps, more appropriately to the head of the Law of Nations, than to that of Admiralty and Maritime Law. But the boundaries which separate these subjects are often so faint, as to elude discrimination. All of the doctrines relative to the

freedom of navigation, and of maritime commerce arise so often in the discussion of admiralty questions, as to give this volume a claim to be here inserted.

Mr. Barton's is one among the numerous treatises to which the violation of neutral rights, during the late wars, gave rise. The subject is ably discussed, but, perhaps, too much in the spirit of a partisan, on the side contended for by neutral powers. It was published at Philadelphia in 1802

(Note 8) DE MARTENS' ESSAY ON PRIVATEERS, &c.—AZUNI, in his work on Maritime Law, page 37, vol 2, thus expresses himself concerning this treatise.—

'Among the maritime captures which most attracted the attention of Europe, during the last war, may be distinguished that of the rich Spanish register ship *Santo Yago*, taken 5th April, 1793, by the French, and retaken, nine days after, by the English. The process instituted in England for the restoration of this prize, induced M. Martens, a learned professor in the university of Gottingen, and the distinguished author of several works on public law, to publish, in 1795, an essay on Privateers, Maritime Captures, and Recaptures. In the first chapter he traces the history of privateering from the middle ages to the present time; and in the second, makes some rapid observations on the *modern* rights of privateering, in which he follows the general principles laid down by M. Valin, in his 'Traité des Prises,' and by Emerigon, in his 'Traité des Assurances.' The third chapter is divided into two sections, in which he endeavours to establish some theories of the universal, and positive law of nations, on the subject of recaptures. He gives a brief and very imperfect account of the ancient codes of maritime law, and takes a cursory notice of the laws and treaties of some of the northern powers on the same subject. He passes over in silence the ancient and

modern laws of many of the Italian states, of which so ample a view has been given in the first volume of the present work. The essay of M Martens displays much erudition, which will render it instructive, and highly useful to those who feel interested in the progress of the science of maritime legislation.'

George Frederick Von Martens was not only distinguished as a professor in the University of Gottingen, and as Aulic counsellor of Hanover, but his extensive acquaintance with the laws of nations, and diplomacy, brought him into the service of foreign nations. His Treatise on the Law of Nations, which was translated by the late William Cobbett, appeared as early as 1789. In 1801, he published his Course of Diplomacy, in 3 vols entitled, '*Cours Diplomatique, ou Tableau des relations extérieures des puissances de l'Europe.*' This was succeeded by his valuable collection of treaties of alliance and peace, from 1761, in 16 vols. and with its supplements in 1829, in 19 vols. His last work preceding his death in 1821, was in German, being a treatise on the Elements of Commercial and Maritime Law. From 1806 to 1821, he was variously employed by the German States. During the reign of the king of Westphalia, Jerome Bonaparte, he was occupied in the financial department of that monarch—and in 1814, his services were engaged in the preparation of the Reports, &c. for the diplomatists at the congress of Vienna. When minister from Hanover to the Diet at Frankfort, to which he was appointed in 1816, he died there in the year 1821. His Essay on Privateers, Captures, and Recaptures, was translated by Thomas Hartwell Horne, with notes, London, 1801.

(Note 9.) POTHIER ON MARITIME CONTRACTS —We refer the student to Note 12, on Title X. for our remarks on the work of M. Pothier, and the notice there taken of Mr. Cushing's translation of M. Pothier's treatise

✓ (Note 10.) CLERKE'S PRACTICE OF THE ADMIRALTY —The practice of admiralty courts still remains in England, in a great degree an occult art. Whether, or not, the procedure and formulæ of their Instance and Prize tribunals have been withheld from the public *ex industria*, it is certain that much less has been done to enlighten the profession on this, than on any other branch of their jurisprudence. The small work of Francis Clerke appeared in 1679. It was imperfectly translated in 1722, and all of the subsequent editions, down to the fifth and last, which appeared in 1798, remain in Latin, with no additional learning, and almost wholly devoid of precedents, and the entire work is confined to the practice of the Instance side of the High Court of Admiralty. Nor have any precedents, or books of this practice, of much note, since appeared in that country,—though for nearly two centuries past an infinitude of important materials must have accumulated in their courts. It would seem as if this remarkable dearth, in so fertile a field, could not be accidental. In 1809, the late John E. Hall, published at Baltimore, a volume on Admiralty practice, consisting of three parts, viz. An historical examination of the civil jurisdiction of the court of Admiralty. An improved translation of Clerke's Praxis, with notes on the jurisdiction and practice of the American courts—and lastly, a collection of precedents; which collection, however, is extremely meagre, but still very acceptable, as they were so much needed. To Mr. Wheaton, we are also greatly indebted for additional light on these subjects, in his learned appendixes to his reports of the decisions of the Supreme Court of the United States.

The practice in our district courts, which embraces *prize* as well as *instance* proceedings, has been most extensively illustrated and settled in the decisions reported by Peters, the elder, Bee, Gallison, Mason, Paine, Washington, Cranch, Wheaton,

and Peters from the whole of which we may anticipate an elaborate and learned treatise from the pen of the late Andrew Dunlap, district attorney of the United States for the district of Massachusetts, which is now in press. The work is entitled, 'A Treatise on the Practice of Courts of Admiralty in Civil Causes of Maritime Jurisdiction, with an Appendix, containing a full collection of English and American Precedents.' To all of these sources we confidently refer the student, and learned lawyer, (not of our country only,) for more ample means of instruction in this important and beautiful system of law, than is to be found elsewhere.

(Note 11) JACOBSEN'S SEA LAWS.—This work is particularly valuable on three accounts, first, it is eminently practical, its learned author having collected his facts during a long professional experience, and from a correspondence maintained with the most distinguished maritime jurists of Europe—secondly, Mr. Jacobsen was a civilian of great learning, equally well acquainted with the legal literature of ancient and modern times, and of all nations—and lastly, his work is based on no overweening attachment to any theory of international law, but derives its facts and principles from the maritime regulations and conduct of all nations, and educes from the whole a system of maritime jurisprudence, remarkable for candour, justice, and reciprocal concession. The bibliography of this work also, merits particular regard. It is ably translated by Mr. Frick, whose notes are very creditable to his learning and discrimination.

(Note 12) PETERS' ADMIRALTY DECISIONS.—The Admiralty Reports of judge Peters were published in July, 1807, and embrace cases occurring between the years 1780 and 1807. The decisions are chiefly those of the Hon. Richard Peters, some are by the Hon. James Winchester, late judge

of the district court of Maryland, and others by Francis Hopkinson, esq. of Pennsylvania, men of no less varied learning, than deep research in the law. The Appendix to this work is valuable, as it contains the laws of Oleron, Wisbuy, and the Hans-Towns, the ordinances of Louis XIV.; A Treatise on the rights and duties of owners, freighters, and masters of ships, and mariners, and our own laws relative to mariners. The decisions have been regarded as generally sound, sufficiently learned, and well reported. The student will not fail frequently to consult the decisions of the Hon. Thomas Bee, judge of the district court of South Carolina, published in 1810, and by all means Gallison's Reports of Cases in the Circuit Court of the United States for the first circuit, published in 1815, containing the decisions of *Joseph Story*, esq. one of the judges of the Supreme Court of the United States a station which he has adorned with the abundant fruits of a vigorous mind, richly improved, and strengthened by the laudable ambition of attaining the highest legal pre-eminence.

(Note 13.) COOPER'S OPINIONS, &c.—This admirable opinion of judge Cooper's, in the case of Dempsey, assignee of *Brown v. the Insurance Company of Pennsylvania*, is perhaps one of the ablest, most comprehensive, and perspicuous arguments that has appeared on that difficult and highly important question, the effect of a sentence of a foreign court of admiralty, as evidence in domestic suits. Both in England and this country, the question has been very frequently agitated, and, not less frequently, variously and confusedly decided.

Judge Cooper, in this opinion, has presented a more luminous and satisfactory view of the subject than any we have ever seen. Judge Brackenridge, of the same state, in the case

of Calhoun v. The Insurance Company of Pennsylvania, 1 Binney, 203, advocated, with much force of reasoning, the doctrine of the *non-conclusiveness* of such sentence. In his Miscellanies 525, note *, speaking of judge Cooper's opinion, he says, 'I claim only to be the precursor of judge Cooper on the same side of the question, and this I have a right to claim. But I would recommend every American student to read this opinion of judge Cooper's, not so much for the reasoning and ideas, as for the analysis, and systematic comprehension of the subject. It is a model that deserves to be admired.' It was published by A. J. Dallas in 1810, in a small octavo volume of eighty pages, accompanied by an Introduction of twelve pages, highly worthy perusal.

[*§* Note 14 —In addition to the works enumerated in the Syllabus of this Ninth Title, which form the student's regular Course, we present him in the following list, a more ample view of the Sources of maritime and admiralty law, so as to enable him occasionally to refer to them, and to judge in some degree of the nature and extent of the bibliography of this subject. The enumeration, as we hope, will also aid the researches of scholars in the law. It is proper to apprise the student that the subjects of some of these works are not peculiar to the present title, but run into the cognate topics of the *lex mercatoria*, of international law, &c. *§* Vide ante Advertisement, p xvii xviii also p 58, 342, and Note 1, on Title viii for our further views on this subject]

SOURCES OF MARITIME AND ADMIRALTY LAW.

AZUNI —Recherches pour servir à l'histoire de la piraterie avec un précis des moyens propres à l'extirpation des pirates barbaresques. *Gênes*, 1816

D'ABREV.—Traité juridico-politique sur les prises, traduit de l'espagnol, avec notes de Bonnemant. *Paris*, 1802, 2 vols

ARNOULD —Système maritime et politique des Européens pendant le dix-huitième siècle, fondé sur leur traités. *Paris*, 1797.

BILBOA.—Ordinances of. [*Vide also 17, out of the 29 chapters, of these Ordinances, ably translated from the Spanish. Anonymous, New York, 1824*]

BOUCHER.—Consulat de la Mer, ou Pandectes du droit commercial et maritime, traduit du Catalan. *Paris, 1808, 2 vols*

BOUCHER —Institutions au droit maritime. *Paris, 1803.*

BOULAY-PATY.—Cours de droit maritime d'après les principes et suivant l'ordre du Code de Commerce *Paris, 1823, 4 vols.*

BAJOT.—Annales Maritime, &c. *Paris, 1819*

BECCANE.—Commentaire sur l'Ordonnance de la marine, 1681, édition réduite aux parties qui ont un rapport direct avec le Code de Commerce, par M. Becanne. *Poitiers, 1829, 2 vols. 8vo.*

BOUTARIC.—Explication de l'Ordonnance de Louis XIV. *Toulouse, 1743.*

CHALMERS' Opinions of Eminent Lawyers. *London, 1817, 2 vols.*

CLEIRAC, ETI.—Les Us et Contumes de la Mer. *Milano, 1806, 4 vols.*

CAPMANY.—Costumbres Maritimas de Barcelona *Madrid, 1791, 2 vols.*

DUFRIQUES.—Code des prises maritime et du commerce. *Paris 1804, 2 vols.*

DUPIN.—Dissertation sur le domaine des mers, 1811.

EARNSHAW'S Digest of the Laws relating to shipping, navigation, &c. in the British Colonies. *London, 1819.*

FUERO JUZGO. —[A Gothic Spanish Code, promulgated in 693.*]

* This code contains little, if any thing, on the subject of the present Title, and is only mentioned in conformity to a prevalent opinion that it is a source of maritime law, in that nation.

FUERO REAL.—[A Spanish Code, promulgated in 1255.*]

FOURNEL.—Commentaire sur le Code de Commerce. *Paris*, 1808.

GALIANI.—Dei doveri de Principi neutrali verso i Principi guerreggianti e di questi verso i Principi neutrali. *Napoli*, 1782.

GUICHARD.—Code des prises maritimes, et des armemens en course. *Paris*, 1799, 2 vols.

GIROD ET CLARIOND.—Journal de jurisprudence, commerciale et maritime, ou Recueil de decisions notables rendues par le tribunal de commerce de Maiseille, et par le Cour royale d'Aix. *Marseille*, 1820, &c.

HINCHLIFFE.—Rules of Practice for the Vice Admiralty Court of Jamaica. *London*, 1815

HOLT'S Law of Shipping.

HALE De Portibus Maris, et De Jure Maris et Brachiorum ejusdem. [*Vide Hargrave's Law Tracts.*]

HORSON.—Questions sur le Code de Commerce *Paris*, 1829, 2 vols.

HUBNER.—De la Saisie de bâtimens neutres. *La Haye*, 1759.

JORIO.—Giurisprudenza del Commercio. *Neapoli*, 1799, 4 vols.

JACOBSEN.—Laws of the Sea, with reference to maritime commerce, during peace and war. *Altona*, 1815. Translated from the German, by William Frick, with valuable annotations. *Baltimore*, 1818. ¶ We know of no one work on general maritime jurisprudence, in the whole bibliotheca legum, that we can more strongly recommend.]

LEE.—Treatise of Captures in War. *London*, 1803. [This is a Translation of the first book of Bynkershoek's *Questiones juris publici.*]

* There is something on shipping and maritime contracts in this code, but still so little as scarce to entitle it to be mentioned.

LAMPRIDI.—Du Commerce des neutres en temps de guerre, traduit de l'Italien, par M. Peuchet. *Paris*, 1802.

LEBEAU.—Code de Prises, 3 vols. *Paris*, 1799.

LOCCENIUS.—De Jure maritimo et navali. *Holmeæ*, 1652.

LANGE.—Brevis Introductio in notitiam legum nauticarum et scriptorum juris rei que maritimæ. *Lubecæ*, 1713.

LAPORTE.—Le nouveau Valin, ou Code commercial maritime. Revu et approuvé par M. Boucher. *Paris*, 1809.

LAWS OF RHODES.

LAWS OF OLERON.

LAWS OF WISBUY.

LAWS OF THE HANSE TOWN.

} Vide 'Sea Laws,' which work contains a translation of all these laws—
} vide, also, Appendix to Peters' Admiralty Decisions, vol 1, p 260, where these laws are to be found, with learned annotations

MAXWELL'S SPIRIT OF Maritime Laws *London*, 1808, 2 vols.

MARINE ORDINANCES OF LOUIS XIV. [Vide Peters' Adm. Deci. vol. 2, Append. p 503.

MALLINCKRODT.—Droit commercial général pour les Etats Prussiens, 1825.

MOLLOY de Jure Maritime et Navali, 2 vols. 1769.

PARDESSUS.—Collection de Lois Maritimes antérieurs au XVIII. e Siècle. *Paris*, 1828, 1831, 1834.

PIANTANIDA.—Della Giurisprudenza maritima commerciale antica e moderna. *Milano*, 1806, 4 vols.

PASTORET.—Quelle a été l'influence des lois maritimes Rhodiens, &c.? *Paris*, 1784.

POPE.—Merchant, Ship Owner and Shipmasters' import and export Guide, relative to shipping, navigation and commerce. *London*, 1828.

PARTIDAS.—[A Spanish Code formed under the auspices of Alonzo the Wise in 1260, and said to be, perhaps, the most complete code ever formed! The principal editions are in 1550, by Alonzo Diez de Montalvo, in 2 vols. folio, in 1611; by Gregorio Lopez, in 7 vols. fol. and in 1802, a

much improved one, in 3 vols 4to. In 1808, Marina published an historical commentary upon the Partidas. The title is *Las Siete Partidas del Sabio Rey D. Alonzo el nono*. From our brief examination, we are inclined to the opinion there is very little of maritime jurisprudence in this ('cuerpo completo') complete body of Law.]

ROBINSON —*Collectanea Maritima* London, 1801.

REEVES —*Law of Shipping and Navigation.* Lon. 1807.

STYPMANUS —*Fasciculus scriptorum de pure nautico et maritimo, cum præfatione Henneen.* Halle, 1740.

STYPMANUS.—*Jus Maritimum* Stralsund, 1661.

SMITH.—*Maritime Practice in Scotland*, 1833

SEA LAWS.—[This anonymous work, without date, and which is mentioned in no catalogue, or bibliotheca legum, as far as we know, is a valuable compilation, and is among the most complete of the old collections.*]

SCHOMBERG.—*A Treatise on the Maritime Laws of Rhodes.* London, 1786.

SILDEN —*Mare clausum, seu de domino Maris.* London, 1635 M. Needham's Translation, 1668.

USTARIZ.—*Théorie pratique du commerce et de la marine.* Paris, 1753.

VALIN.—*Nouveau Commentaire sur l'Ordonnance de la marine du mois d'août, 1681.* Paris, 1760, 1766, 2 vols. Poitiers, 1829, 1 vol. 4to. or 2 vols 8vo. [Vide also 2 Peters' Adm. Dec. Appen. 2 vol p. 503.]

VALIN.—*Traité des prises, ou Principes de la jurisprudence Française, concernant les prises qui se font surmer.* La Rochelle, 1763, 2 vols

VAN HEYTHUYSEN.—*Marine Evidence.* London, 1819.

* Vide 2 Peters' Adm. Dec. vol. II. Appendix, where one of the Tracts of this collection is inserted

WEDDERKOP.—Introductio in jus nauticum. *Flensburgi*,
1757.

WARD.—Treatise on the Law of Contraband. *London*, 1801.

WELWOOD.—Abridgment of all Sea Laws, gathered forth
from all writings and monuments, which are to be found
among any people upon the Coasts of the Great Ocean
and Mediterranean Sea *London*, 1613, 4to.

ZOUCH.—Jurisdiction of the Admualty of England asserted.
London, 1685

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MISCELLANEOUS

1. Dr. Hallifax's Analysis of the Civil Law, in which a comparison is made between the Roman laws, and those of England, *Sec. London, 1775, 1818 (Note 17.)*
- * E. 2. Wilde's Preliminary Lecture to the Course of Lectures on the Institutions of Justinian. *Edmb 1791 | The second part only, 83 pages | (Note 18.)*
- * e. 3. Dr. Irving's Observations on the Study of the Civil Law. [pp 78, 3d edit 1823] (*Note 19*)
- * E. 4. Dr. Reddie's Historical Notices of the Roman Law, &c. [pp 136. *Edmb. 1826*]
- * E. 5. Dr. Brown's Remarks on the Study of the Civil Law, &c [pp. 78. *Edmb. 1828*]
- + 6. Article I. volume 2d, of the London Law Magazine, p 482 to 522
- 7. Article III. volume 2d, of the American Jurist, p. 39 to 65
- * E. 8. Pothier's Pandectæ Justinianæ, tom. 5. 'Notitia Variorum Auctorum quos in illustrando hoc nostro Pandectarum Justinianarum opere adhibuimus; et quorum nomina in eo passim, in Notis præcipue, laudantur.' 21 pages. (*Note 20.*)
- * E. 9. Butler's Memoir of the Life of Henry Francis D'Aguesseau. *London, 1830 (Note 21)*

AUXILIARIES, AND BOOKS OF OCCASIONAL REFERENCE, IN THE STUDY OF THE ROMAN OR CIVIL LAW

[The following enumeration of the works of the Civilians, of ancient and modern times, is much more extensive than will be needed by most American students, or desired even by those who may wish to prosecute the subject beyond the practical requirements of their profession. From this remark, however, we may perhaps except those who design to pursue the profession in the state of Louisiana, where the civil law lies at the foundation of its jurisprudence. We are also aware that none of the libraries in our country, at present, possess even the larger part of the works we have designated. But we feel assured that the riches of the abundant fountain of Roman legal wisdom, are destined, in this country generally, to be more and more explored, and that as an acquaintance with its *sources* contributes in no small degree to promote its cultivation, we hope to render some service by pointing out what this vast science offers to those who are really seeking after its treasures. We are also daily made sensible of the truth, that one of the principal causes which have retarded the growth of the civil law in our country, has been, not only that our libraries are but poorly furnished in this department of legal literature, but that even the names of authors, and the titles of their respective works, are known to, comparatively, a very small number of the profession. If such preliminary, and essential knowledge be wanting, the science must remain with those who at present cultivate it. The task we have now undertaken could have been more ably executed by any of those able jurists of our country, who have made the Roman Code an object of their special study, and we much regret they have not used their ample knowledge to convince the legal profession how great has been their loss in so long neglecting this noble science, and to point out, with accuracy and minuteness, its numerous sources. But as this has not been done, and as it falls directly within the scope of our work, the duty, however imperfectly executed, has been done with all requisite care.]

We are much pleased to find that within the last few years, the new impulse which various causes have given to this study in continental Europe, has not been unfelt in this country. The wave has been a long time in reaching our shores, but we doubt not that it will have its fructifying influences, and that our jurisprudence, so eminently fitted to assume to itself, and to harmonize with, the *jus privatum* of the Roman Code, will in time, be illustrated by many of its excellencies. It is manifest there is a growing interest felt in our country for this study, not merely among a few of the eminent lawyers, but among others of less age and distinction, and

even among some young students of expanded views, and of liberal education. Such periodicals as the *American Jurist*, the *United States Law Intelligencer*, the *Civilian's Magazine*, &c. have powerfully tended to expand the general mind on the subject of universal, and comparative jurisprudence, and to stimulate the profession to more enlarged and philosophical views of their science, by instructing them in its almost daily progress in other countries, and under the auspices of as enlightened men as have ever adorned any science. We have been gratified with the reception of the present title in the first edition of our work, as we have reason to believe it had some effect in promoting the study of Roman law, and was indulgently received by those of our countrymen, who at that time were known as civilians, and also, by others, who had not previously made the Roman law a branch of their professional studies.

In the state of Louisiana, most of the works we have designated are, no doubt, known to their jurists. Such of them as may not be found in the library of one lawyer, may probably be met with in that of another. Happily, that which in a science is, at present, *terra incognita*, may, in a short time after, become a familiar region, and we trust the day is not remote, when every well selected law library of our country will possess most, and some of our public institutions all of the works on the civil law, which we have now noted. For several years past, no little pains have been taken by the author to make his own collection, in this department of the science, extensive and valuable. Still, he has to regret that many of the works now mentioned, are known to him only through the medium of various foreign authors, whose more extensive facilities enable them to be considerably in advance even of those of this country who make it a special object to mark the progress of this science in the old world. We are indebted, in part, to the works of Warnkönig, Niebuhr, Pothier, Bynkershoek, Ferrière, Terrasson, Irving, Brown, Reddie, Bell, Savigny, Burke, Spence, some of Hugo's works, &c. for our information as to many of the volumes we have noted under the following catalogue. These writers are themselves, high authority for the value and excellence of the enumerated works, if any were necessary, or, were any special care essential in such a matter, which we presume is not the case, as a lawyer's library cannot with propriety include such works only as are the most approved.

¶ For the convenience of the student, we have preferred to arrange the following works alphabetically, rather than chronologically, especially as the dates are given, and as some of them are accompanied by a brief note explanatory of such matters relating to them, as are of immediate use.]

A.

- ALCIAIUS, (And) Opera omnia *Frankfurti*, 1627, 4 vols. fol
 Commentarii in varios titulos Digestorum, 1617, fol
 Parergorum juris libri duodecim *Basileæ*, 1558
 Paradoxorum libri vi—Disputationum juris libri iv—Prætermisorum libri
 ii *Mediolani*, 1518
 Adnotationes in tres posterioris Codicis Justiniani libros
- ANICHOLF, (A G L) De contractu locationis et conductionis *Lugd-Batav*
 1515
- ASSEN, (Jan Van) Annotatio ad primum librum Institutionum Gaii *Lugd-Batav*
 1826, 8vo
- AUGUSTINUS, (Antonius) De Legibus et Senatus Consultis
 Opera Omnia, *Lucæ*, 1777, 8 vols fol [In 1779 he published at *Terni*
agona, a treatise on the proper names in the Pandects, and about the
 same time collated the *Florentine Pandects*]
- AZO Summa super ix Codicis ac Institu 1118
 De Prescriptionibus, 1568
 Summa Juris Civilis, 1563
- ✓ AYLIFFE'S New Pandect of the Roman Civil Law *London*, 1731, fol
- ATFRANUS, (J) Interpretationum Juris, libri v *Lugdum*, 1778, 2 vols 4to
- ACCURSIUS, (B) Justiniani Codex cum glossis perpetuis, 1175
- ALBANENSIS, (D) Promptuarium Operum Jacobi Cujacii *Mutinæ*, 1795, 2
 vols fol.
- ALTESERRA Brevis et enucleata expositio in Institutionum Justiniani, libros iv
Parisus, 1664, 1to
 Opera omnia *Napoli*, 1780, 11 vols 4to
 De Fictionibus Juris *Parisus*, 1659, 4to
- ANIANUS Codex Theodosianus [See J Srichard's edition, *Basle*, 1528 But the
 edition by Tillet, Bishop of Meaux, *Paris*, 1550, is much superior]
- ANNIANUS [Vide Breviarum Codex Theodosianus Tillet]

B.

- BERRIAT SAINT-PRIX Histoire du Droit Romain, suivie de l'histoire de Cujas
Paris, 1821
 Projet d'un Cours sur les préliminaires du Droit *Grenoble*, 1809
 Discours sur les vices du langage judiciaire *Paris*, 1809
- BUDÆUS, (Gul) Opera Omnia *Basiliæ*, 1537, 4 vols fol
- ✓ BYNKERSHOEK, (Cor Van) Opera Omnia *Lugd Batav* 1752, 7 vols 4to
 [Questiones Juris Publicæ—Libri ii De Rebus Bellicis—De Rebus Varii
 Argumenti Questiones Juris Privati—Libri iv Observationes Juris
 Romani—Libri viii—Opera Minora [Among which is his Disserta-
 tion on the obscure subject of the RES MANCIPII, which has received
 much illustration from the Institutes of Gaius, lately brought to
 light by Niebuhr, and edited by Professor Goschen] Opuscula. To
 these is added a seventh volume—Observationes Juris Romani His

- work *De Foro Legatorum* was translated by Barbeyrac, in 1728—and is entitled *Du Judge Competent des Ambassadeurs* Vide ante Note 5, p 151, for some further notice of this great civilian.]
- BOXMANUS *De legibus Romanorum sumptuarias* *Lugd Batav* 1816
- BACHOVIVS *Commentarii theoretici et practici in Institutiones* *Francfurti*, 1613, 4to
Commentarii in primam partem Pandectarum *Francfurti*, 1630, 4to
- BOEHMIRUS *Exercitationes ad Pandectas* *Hanover*, 1764 6 vols 4to
- BRUNNEWMANNUS *Comment in 1. libros Pandectarum* *Witeb* 1731, fol
- BLACK J *Corpus Juris Civilis, recognitum et brevi annotatione instructum, eedit* *Lipsia*, 1825, 1829, 4to
- BRANDELLR *De Origine, sitis et officis Juris consultorum* *Lugd Bat.* 1814, 4to
- BURMANNUS, (N. L.) *De Fidejussoribus eorumque privilegis*, 1804
- BEAUFORT *La République Romaine* *Paris*, 1767, 6 vols 12mo
- BREVIARIUM ANIANI, or Breviarium Alaricianum [Vide Interpretationes ad Codicem Theodosianum, et Recetas Sententias Julia Primi *Basle*, 1528 *Lug* 1566 *Par* 1586 *Geneva*, 1592, 4to *Lipsie*, 1706, 6 vols fol *Libri v priores* *Lipsia*, 1825, 8vo *Fragmenta* *Bonn*, 1825, 8vo]
- BEAUFORT'S *Republique Romaine*, 6 vols 8vo *Paris*, 1776, or 2 vols 4to 1766
- BLEISWICK, (H. A. Van) *An pacta contractibus stricti juris adjecta, insunt in his ex parte actoris?* *Lugd Batav* 1827, 8vo
- BEVER, (Dr T) *Discourse on the study of Jurisprudence and the Civil Law, being an Introduction to a Course of Lectures* *Oxford*, 1766, 4to
- BOUCHAUD'S *Recherches Historiques sur les Loix des Magistrats Romains, Quatrième Mémoire* *Mem de l'Académie*, II tom p 1
- BUTLER, (Charles) *Memoir of the Life of Henry Francis D'Aguesseau, with an historical and literary account of the Roman and Common Law* *London*, 1830
- BRISSENIUS *De Verborum, quæ ad jus pertinent, significatione* *Paris*, 1596, 1744 *Francfurti*, 1683
- BRISSENIUS *De Formulæ et Solemnibus Populi Romani verbis* [*Bach's edition*, *Leipsic*, 1754, fol and *Cramer's Supplement* *Acht*, 1815, 4to]
- BACONIUS *De Justitia Universali, et de Fontibus Juris*
- BRENCHMANNUS *Historia Pandectarum, seu Patum Exemplaris* *Florentini* *Utrecht*, 1722
- BRODIE'S *History of the Roman Government* *Edinb* 1810, 8vo
- BERNARDI *de l'origine et du progrès de la législation Française, ou l'histoire du droit public et privé de la France, depuis la fondation de la monarchie, jusqu'à la Revolution* *Paris*, 1806, 1817, 8vo
- BRACHYLOGUS (or rather) *Enchiridion juris instar Imperialium Institutionum*, *Heidelb* 1570.
- BRACHYLOGUS (or rather) *Corpus Legum per modum Institutionum* *Lug* 1519
- BOEKELEN *De diversis familiis veterum Jurisconsultorum* Also *De Exceptionibus tacitis in pactis publicis*
- BOUCHAUD, *Commentaire sur la loi des douze tables*, 2 vols 4to *Paris*, 1803
- BERTRANDUS, (Joan.) *De vitis Jurisperitorum* *Italæ* 1718, 4to
- BUDÆUS, (G.) *Annotationes in Pandectas*, 1580, 1556, *Parisius*

- BARO** Institutiones et ad Titulum Dig de rebus creditis
- BOEHMERUS** Introductio in Jus Digestorum, 1704, 14th edition, 1791, 8vo
- BIENER'S** History of the Novels of Justinian *Berlin*, 1824, 8vo [He is also the editor of Heineccius' Elements, and of the Institutes of Justinian. *Leipsic*, 1789, 1816 *Berlin*, 1812]
- BRONCHORSTIUS** De diversis regulis juris antiqui, 1648 *Lipsiæ*, 1667
- BARCLAY.** In Titulum Pandectarum de Rebus Creditis et Jurejurando *Paris*, 1605, 8vo
- BACHIUS** Historia jurisprudentiæ Romanæ *Leips* 1754, 8vo et 1806 [Cupes novissima recensio sub prelis est Sexta editio, 8vo 1807]
- BALDUINUS**, (Franciscus) Libri duo in leges Romuli, et duodecem tabularum, 8vo *Basil*, 1559 De Jurisprudentia Muciana et De Jure novo Commentariorum libri quatuor
- BARRIGA** Epitome juris et legum Romanorum, 8vo 1756
- BASILIKA** Fabrot's edition, 7 vols *Paris*, 1647
- BLONDEAU'S** Tableaux Synoptiques du droit privé, &c *Paris*, 1818, 1 vol 4to
- BRUNQUELLUS** Historia Juris Romano Germanici *Amst* 1730, 1734, 1751, 8vo

C

CODE JUSTINIAN. [§7- The following are the distinguished Commentators on, or Editors of the Code]

- BARTHOLUS** Comment in Codicem *Lug Bat* 1549, 2 vols fol 1549
- CORVINUS** Jurisprudentiæ Romanæ Summarium, seu Codicis Justiniani methodica enarratio *Amstel* 1655, 4to
- GIPHANIUS** Explanatio difficultiorum et celebr. legum Codicis Jus *Colonæ*, 1614, 4to.
- ✓ **PEREZIUS** Prælectiones in duodecim libros Codicis *Colonæ*, 1740, 2 vo 4to
- ZOESIUS** Commentarius ad Codicem. *Bruxellus*, 1718, fol *Colonæ*, 1737, 2 vols 4to
- BRUNNEMANUS** Commentarii in Codicem *Lipsiæ*, 1699
- WISENBACHIUS.** Com. in libros vii Codicis, 1664
- PITHOU** Obser ad Cod et Nov *Paris*, 1689
- ALTESERRA** Recitationes in Dig et Cod *Naples*, 1774, 11 vols 4to
- PACIUS** Analysis in Codicem, 1659.
- ROSSIG** Elementa J R secundum ordinem Codicis *Lipsiæ*, 1805, 8vo
- TISSOT.** Les Douze Livres du Code de Justinian, Novels, Fragmens de Gaius D'Ulpien, et de Paul, traduits en Français. *Metz*, 1806, 1810, 4 vols. 4to. [These four volumes, with the seven of the Digest and the one of the Institutes, translated by M Hullot, completes the whole body of the Roman Law in the French language, in 12 volumes, 4to. These translations are accompanied by the Latin text]
- CROÏSET** De interpretatione legum doctrinali *Lug Bat* 1807
- CROUSSE** De contrabenda emptione et venditione ex jure Romano. *Lovanii*, 1824, 4to
- CREMERS** Ad locum jur Rom. de revocandis donationibus inter vivos, propter liberos supervenientes *Groningæ*, 1817, 8vo
- CUJACIUS**, &c Lexicon Juridicum *Genevæ*, 1615, 8vo
- Paratitla in Pandectas, et ix libros Codicis *Parisiis*, 1651, 2 vols. 18mo

- CORVINUS *Digesta per aphorismos strictim explicata* *Frankfurti*, 1697, 8vo
- COLOMBET *Paratitla in Pandectas* *Tolosa*, 1701, 12mo
- CRAMER, (Professor at Kiel) *De verborum significatione Dig et Cod*
- CALVINUS *Lexicon Juridicum Juris Romani, &c* *Frankfurti*, 1690 *drum*
Genevæ, 1610, 1731, 1759, 2 vols fol
- CODEx Theodosianus, cum perpetuis commentariis, Jacobus Gothofredi, 6 vols
- CUJACII Opera Omnia, 10 vols, edited by Charles Hannibal Fabrot *Paris*, 1658
- CORPUS Juris Civilis [Van Leeuwen's Gothofred's edition] *Jugd Batav* 1663
- COWELL'S Institutes, digested after the method of the Civil or Imperial Institutions, 12mo
- CLOSSIUS *Theodosiani Codicis genuini Fragmenta, ex Membris, Bibliotheca Ambrosiane Mediolensis*, 1821
- CODEx Theodosianus a J Scharlo fol *Bas* 1528, a D Ruttero *Lips* 1745
Repetitæ Praelectiones
- CONTIUS *Opera Omnia, collecta studio Edmundi Murilli* *Paris*, 1616 *Amplex*,
1725
Lectiorum Subcesivarum Juris Civilis Libri duo
Commentarius in Institutiones, et ad Legem Juliam Majestatis, 1594, 8vo
- CODICIS Theodosiani Fragmenta inedita ex Codice Palimpsesto Bibliothecæ R' Taurinensis Athenæi in lucem protulit atque illustravit Amedeus Peyron, 1824
- COLLATIO Mosaicarum et Romanarum Legum, a Petro Pithæo, 4to *Paris*, 1572
- CUJACII Paratitla in Pandectas et Codicem, 12mo
- CROUSSE, *De contrabanda emptione et venditione ex jure Romano* *Lovanii*, 1824, 4to

D

- DUCAURROY *Juris Civilis Ecloga* *Parisus*, 1822, 1827
Les Institutes de Justinien *Paris*, 1829
Institutes de Justinien, nouvellement expliquées *Paris*, 1829
- DIGEST, &c [The earliest editions are those of Rome, 1175, Perugia, 1476, Milan, 1482, Venice, 1489, Paris, 1552, and Florence, 1553. In 1761, M Hulot commenced the translation into French, of the entire Corpus Juris Civilis, and though he did not live to complete his great work, it was subsequently executed as follows—*Digest*, 44 books by Hulot, and the remaining six books, by Berthelot, published at Metz, 1803, 1805, 7 vols 4to or 35 vols 12mo *Institutes*, by Hulot, Metz, 1806 4to *Codex*, by Tissot, Metz, 1807 to 1810, 4 vols 4to *Novels*, by Beringer, Metz, 1811, 2 vols 4to or 10 vols 12mo

THE COMMENTATORS have also been very numerous, learned, and indefatigable, the most noted of whom are Budæus, Bachovius, Boehmer, Brunmann, Gluck, Hommel, Hartleber, Leyser, Lauterbach, Schulting, Struvius, Tulden, Volt, Wisenbach, Wensembeck, and Zoesius, the titles of whose respective works will be found in this enumeration, under the initial letter of the author's name. The Digest, &c has also assumed various forms, the most noted of which are by Boehmer, Cujas, Corvinus, Colombet, Dessauls, Ferniere, Heineccius, Helfeld, Ludovicus, Malblanc, Mulhenbruch, Pothier, Thebault, Vinnius, Volt, Warner, and Westenberg—the titles of whose works respectively will be found in the present enumeration.]

DEMPSIER, (Thomas) *Antiquitatum Romanorum corpus absolutissimum in quo præter ea quæ Johannes Rosinus delineaverat infinita Suppletur, mutantur, adduntur ex criticis, et omnibus utriusque linguæ auctoribus collectum, poetis, oratoribus, historicis, jurisconsultis, qui laudati, explicati, correctique Paris, 1613, fol*

DESPOI *De acquirenda vel mittenda possessione Lovanii, 1827, 8vo*

DEDEL *De auctoritate præstanda a venditore rei vitiosæ, 1815*

DESSAULES *Dictionaire du Digeste Paris, 1809, 2 vols 4to*

DUCK *De Usu et Autoritate Juris Civilis Londini, 1653*

DONELLUS *Commentarii de jure civili, 5 vols or 12 vols Lucæ, 1770, 1801, 1829*

D'AGUESSEAU *Works, in 9, 13 or 16 volumes Paris, 1759, 1789*

DUAREN'S *Works Lyons, 1584 Cisner's edition, 1579. Lucca, 1772, 4 vols fol*

DABELOW'S *Ausführliche Entwicklung der Lehre vom Concurse der Glaubiger*

DIRKEN'S *Civilistische Abhandlungen, 1820, 1821*

Versuche zur Kritik und Auslegung der Quellen des Römischen Rechts, 1823

DESMARES' *edition of the Collatio Mosaricarum et Romanorum Legum, 1689*

DAVEZAN (Joannes) *De Contractibus et de Servitutibus, 1644*

DE LEGE Rhodiâ *de jactu Lovanii. P. Tromper, 1826*

DORN, (H Van) *Dissertatio de jure commercii Romanorum Lugd Batav 1807*

DUBUISSON, (B H) *Quæstiones selectæ ex capite de pactis, 1816, 4to*

DALY *De contractibus secundum ordinem Institutionem collatarum cum Gaii commentariis, 1823.*

DELVINCOURT'S *Juris romani elementa secundum ordinem Institutionum cum notis, etc editio 4ta 1823 Paris, 1 vol 8vo*

DORNSEIFFEN'S *Jus feminarum apud Romanos tam antiquum quam novum 1818, 8vo*

DUPIN *Précis Historique du Droit Romain, depuis Romulus jusqu'à nos jours, &c Paris, 1825*

Synopsis elementorum juris romani, juxta Heineccii doctrinam Parisius, 1811

DUPONT *Commentatio in commentarium iv institutionum Gaii recenter repertarum, 4to Lug. Bat 1822, 8vo.*

E.

EPHEMERIDUM *Vaticana Juris Romani Fragmenta, Romæ nuper ab ANGELO MAIO detecta et edita Parisius, 1823.*

EISENHARDT, (J F) *Historia Juris Literaria, 8vo 1763*

EVERHARDUS *De Testibus et Fide Instrumentorum*

ELVERS *Promptuarium Cajanum, sive Doctrina et Latinitas quas Gaii Institutiones et Ulpiani tituli exhibent, ad alphabeti ordinem digesta Gottingen, 1824*

EDEN'S *Jurisprudentia Philologica. Oxford, 1774, 4to*

ENCHIRIDION LEGUM *A Discourse concerning the nature, progress, and use of laws in General, 12mo 1673*

EUTROPIUS *Historiæ Romanæ Breviarium [It has been translated into English London, 1684, 8vo.]*

ERDE, (E Van) *Dissertatio de jure liberorum illegitimorum ex juris romani et Codicis civilis præceptis Groningæ, 1819*

ECLOGA *Juris Civilis Paris, 1822, 2 vol 8vo*

F

- FABRI, (Anto) Opera Omnia, 10 vols fol *Lugduni*, 1658
 Codex definitionum forensium *Genev* 1710, fol
- FERRIERE, (Claude Joseph de) Dictionnaire de Droit et de Pratique *Paris*, 1778, 1787, 2 vols 4to
 Histoire du droit Romain *Paris*, 1718, 12mo
 Nova et methodica Juris Civilis Tractatio *Paris*, 1734, 2 vols 12mo
 La Jurisprudence du Digeste *Paris*, 1688, 2 vols 4to
 Du Code *Paris*, 1684, 2 vols 4to Des Nouvelles *Paris*, 1685, 2 vols 4to
- FILANGIERI, (Gaetano) La Scienza della Legislazione *Genoeta*, 1796, 8 vols 8vo
 French translation revised, and augmented, with a Commentary, by Benjamin Constant *Paris*, 1822, 5 vols 8vo *
- FONTANA Amphitheatrum Legale, in qua recensentur omnes auctores juris, eorumque operibus in jure editis *Parmæ*, 1694, 5 vols fol
- FABROTUS. Editio Operum Cujacii, 1658, 10 vols fol
- FICHARDUS, (Johannes) Virorum Qui Superiore Nostrosque Sæculo Eruditione et Doctrina illustres atque Memorabiles fuerunt, Vita, 1536, 4to Vita recentiorum Jurisconsultorum *Padua*, 1565, 4to
 Vita Juris consultorum, 1565
- FERRETUS, (Emilius) Opera Juridica, 1553 *Francofurti*, 1598, 4to
- FULBECK'S Parallel of the Civil, Canon, and Common Law *London*, 1618, 4to
- FARINACCIUS De Testibus *Francofurti*, 1598 Opera Omnia *Antio* 1620, &c 17 vols fol
- FABER, (Petrus) De regulis Juris *Genevæ*, 1618, 4to
 (Antonius) Rationalia in Pandectarum libri viginti, &c *Lugduni*, 1659, 5 vols
- FORNERIUS Commentarius in Titulum de verborum significatione, 1581
- FREHERUS, (Marquhard) Collectio Legum *Paris*, 1572, 1689
 Chronologia Juris
- FABRICIUS Bibliotheca Latina, 2 vol 1728, 1774 *Leipsic*, 3 vols 8vo
 Græca *Hamburgi*, 1718, 1790, 1802

G.

- GLUCK, (C F) [A Commentary or detailed explanation of the Pandects after Heffeld, in German—*ERLANGEN*, 1796, 1830, in thirty three parts]
 Opuscula Juridica *Erlangen*, 1785, 1790, 4 vols 8vo
- GOTHOFFREDUS, (Dionysius) Prefatio ad Lectorem Juridicum Calvinum *Genevæ*, 1759, 2 vols
 Corpus Juris Civilis, 1593, 4to [The Elzevier edition of Simon Van Leeuwen, Amsterdam, 1663, 2 vols fol is the most approved]
 Editio Institut Theophilum *Genevæ*, 1620, 4to
 Praxis Civilis *Francofurti*, 1591, 2 vols fol

* Translated into English by Kendal, 1792, and by Clayton, 1806

- GOTTFREDUS, (Jacobus)** Fontes quatuor Juris Civilis, &c *Genevæ*, 1653, fol
 De Regulis Juris *Genevæ*, 1653, 4to
 Manuale Juris Civilis [Vide new edition *Paris*, 1806]
 Codex Theodosianus *Lugdun.*, 1665, 6 vols fol
 Opuscula Varia Juridica *Lug Bat* 1733, fol *Genevæ*, 1654, 4to
GRAVINA, (J V) Origines Juris Civilis, cum annotat *Mascovii Venetus*, 1758, 4to
 Origines du Droit Civil, ou Histoire de la Législation chez les Romains, traduit par Requier, (sous le titre *Espirit des lois Romaines*) *Paris*, 1753, 3 vols 12mo [See new ed. under the first French title *Paris*, 1822, 8vo]
GAIUS, seu CAIUS Institutionum Commentarii, iv — J F L Goechen *Berolini*, 1821, 8vo *
GOEDDÆUS, (Joannes) De Stipulationibus De Mutuo Commentarius de verborum significatione, 1618, 8vo
GOVEANUS, (Antonius) De Jurisdictione Libri duo Variarum Lectorum Commentarius ad titulum de vulg et pupil substi, ad Legum Falcidianam, &c Omnia Opera *Roterdam*, 1767, fol
GROTIUS, (Hugo) Florum Sparsio ad Jus Justinianum *Neapoli*, 1777, 8vo
Parisus, 1612, 4to
 (Guliel) De Vitis Jurisconsultorum Romanorum *alæ* 1718, 4to
GENTILIS, (Albericus) Comment in Tit Dig de Verb Sig *Han* 1614, 4to
 De Juris Interpretibus Dialogi, vi *Londini*, 1582, 4to *Lipsiæ*, 1721, 4to
 Lectionum et Epistolarum quæ ad jus Civile pertinent, libri duo *Lond* 1585, 4to
 De Legationibus *Lond* 1585, 4to
 De Jure Belli *Lug Bat* 1589, 4to
 (Scipio) De Jure publico Populi Romani De Donationibus
 Opera Omnia *Neapoli*, 1769, 8 vols 4to
GRANDGAGNAGE Commentatio de jure liberorum illegitimorum jure romano et hodierno, 1819
GIPHANIUS Œconomia Juris Civilis *Francof* 1606, 4to
 De Regulis Juris *Francof* 1606, 12mo
 Antinomiarum Juris Civilis libri, iv *Francof* 1666, 4to
 Explanatio difficultiorum et celeb legum Codicis *Francof* 1631, 4to

II

- HEISSELINK** De dominio ejusque acquirendi modis per occupationem et accessionem *Groningæ*, 1821, 8vo
HOMMELIUS, (Car Ferd) Corpus Juris Civilis, cum notis variorum *Lips* 1768
 Palingenesia librorum juris veterum *Lipsiæ*, 1768, 3 vols 8vo
HARTLEBEN Meditationes ad Pandectas *Moguntinæ*, 1778, 1781, 2 vols 4to
HELFELD Jurisprudentia forensis secundum Pandectarum ordinem *Jena*, 1806, 8vo
HOFAKER Elementa Juris Civilis *Gotttingæ*, 1785, 8vo
HUBERUS (Utric) Prælectiones Juris Civilis, secundum Institutiones et Digesta *Lipsiæ*, 1707, 4to
 De Jure Civitatis libri tres *Lipsiæ*, 1708, 1752, 8vo 4to
 Prælectiones Juris Romani, et hodierni ad Pandectas, cum scholiis C Thomasi, 1689 *Lipsiæ*, 1707, 4to

* Translated into French, with notes, by M Boulet *Paris*, 1827, 8vo

- HUBERUS, (Zach) *Dissertationes Franquæ, 1730, 4to*
- HUGO (Gust) *Histoire du Droit Romain, traduite de l'Allemand, par M Jourdan Paris, 1825, 2 vols 8vo*
John Pauli Sententiarum Berlin, 1795, 8vo
Civilistisches Magazin Berlin, 1812, 1830, 6 vols 8vo
Lehrbuch eines Civilistischen Cursus, 7 vols 1792, &c [Most of the works of this eminent Jurist remain untranslated]
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NOTES ON THE TENTH TITLE.

‘*Servatur ubique jus Romanum, non ratione imperii, sed rationis imperio*’

(*Note 1.*) THE EXCELLENCE OF THE CIVIL LAW.—It has been the peculiar fate of the Roman or Civil Law, to be adopted, in part at least, by almost every enlightened nation, as the *substratum* of its municipal code, without that ample and willing acknowledgment, in some instances, of its excellence, to which the numerous advantages which it has conferred on these various systems of law, so fully entitle it. It is by no means my intention to inquire into the causes of this extorted compliment to the merits of the Imperial Code, or the foundations of that jealousy of it, which so long obtained, and the effects of which, even at this time, are by no means inconspicuous. A very superficial view of the juridical history of the nations of Europe, manifestly discloses the great use which has been made of that rich and abundant fountain of legal wisdom, the Roman Code, and fully justifies the observation, that in the pages of the *Corpus Juris Civilis* is to be found the common law of the nations of Europe. ‘That it has attained this pre-eminence,’ says Brown,* ‘we shall not wonder, when we reflect on the superior advantages which attended its formation. Most laws (not excepting those of England,) have been immaturally born in the early times of rudeness and barbarity, and receiving then accretions from chance, or sudden emergency, appear deformed masses, composed of ill-jointed, ill-proportioned members; the laws of shreds and patches. With us, the most liberal constructions and interpretations of the law by judges, perpetual new acts of the legislature on the spur of the occasion, together with

* Brown’s Civil Law, p. 2.

the creation and advancement of separate courts of equity, have been necessary to support a structure which, barely sufficient for convenience, never can admit of much beauty. Far different was the fortune of the Civil Law. It originated in times of the highest civilization, the offspring of philosophy and science. The compilers of it, though at the head of the legal profession, were not mere lawyers, but philosophers and statesmen. Nor were they confined to the resources of their own minds. The labours and compilations of many ages and countries, beginning with the foundation of Grecian legislative wisdom, afforded them powerful auxiliaries. Under their auspices, the Institutes of Justinian appeared in all the beauty which method, arrangement, and the ornaments of style, could add to the natural charms of truth and equity.'

So remarkable for excellence is this system of jurisprudence, that it is frequently denominated the *Code of written reason*, (*Ratio scripta*), and in all cases not specially provided for by their own laws, many nations resort to this as the certain and never-failing source of pure and sound law. Its superiority over all other systems is such, that notwithstanding the numerous obstacles it was obliged to encounter, from the contracted jealousies of many, among whom were even learned and powerful lawyers, the fact was 'by the blessing of God,' as John of Salisbury expresses himself, 'the more the study of it was persecuted, the more it flourished,' so that like the Roman arms, it spread itself in the east and in the west, forming the civil constitution of most of the nations of Europe, and interweaving itself with their own laws, customs, and feudal institutions, in some instances with a very extensive, in others a more limited authority.

The high encomiums lavished on the Imperial Code, by those who were intimately acquainted with it, should carry

with them considerable authority, and though sometimes very extravagant in phraseology, are yet strongly evincive of the sincerity of their admiration. We find Cujacius to tell his son, that 'no nation can be well governed without the help of the Roman law, for without the help of that 'divine science,' the most prudent, wise, and fortunate man will have but a very imperfect idea of the rules of equity and true justice.' M Le Maitre considers the Civil Code as a wonderful collection of the wisdom of many learned men, who did not confine themselves to particular usages, but to justice in general. 'They established,' says he, 'such laws as were deemed most useful to mankind, and have written the rules of government for all nations, as Solomon did those of divine wisdom.'

St. Austin, in his book *De Civitate Dei*, says that 'Providence made use of the Roman people to subdue the universe, and to govern it the better by their laws, after the utter destruction of that empire.' Zonaras is of opinion, that God made choice of the Romans to give the world a sample of his justice, and Baldus says, that in all nations, the Roman law has the authority of reason.

Leuvius is also of opinion that 'the books of the Roman law contain the most religious and equitable decisions that were ever made, as well as the most perfect idea of justice and right, therefore it is that nations acknowledge this code for their common law.'

The profoundly erudite Leibnitz, than whom no higher authority can be named, on most subjects which engaged his inquisitive research, holds, that nothing approximates so closely to the method and precision of geometry, as the Imperial Code. His language is 'Digestorum opus, vel potius autorum, unde excerpta sunt, labores admirari, nec quidquam videri, sive rationum acumen, sive dicendi nervos species, quod magis

accedat ad mathematicorum laudem.* And again, 'Dixi sæpius, post scripta geometrarum nihil extare, quod vi ac subtilitate cum Romanorum Jureconsultorum scriptis comparari possit; tantum nervi inest, tantum profunditatis.*'

The authority of the Germans on all subjects relating to the Civil Law, stands justly pre-eminent, as none have cultivated it with equal ardour and success. They regard it as an essential part of the legal education of every scholar in the law, in all countries, and not merely in Germany, whose *Jus Hodiernum*, can no more be thoroughly understood, without an acquaintance with the Roman Code generally, than can the common law of England, without reference to the feudal and other laws on which it is so largely based. A late distinguished writer of that country, justly observes, 'Omnes jurisconsulti eruditi in eo consentiunt, non solum utilissimam sed necessariam adeo esse juris Romani cognitionem, et illud hodie in juris scholis non minori diligentia ac antehac id fieri solebat, esse docendum. nam neminem ad solidiorem juris prudentiam nisi juris Romani peritum posse pervenire convenit'† We should be much pleased to find this opinion more prevalent than it is in our country, as we shall presently show that the law of England, and of this country is greatly indebted to the Roman code, not merely for occasional principles, but for integral portions of their common jurisprudence.

No nation has been more copiously supplied from the purest streams of the Civil Law, and has at the same time given it so little credit for what it had received, as Great Britain. Many of their ancient writers, as Gilbert de Thornton, Bracton, the author of *Fleta*, Britton, have largely transcribed from the Imperial Code, and, on some subjects, shine entirely in

* Opera Leib. tom. i. 190, tom. iv. 267

† Warnkœnig's *Comm. Jur. Rom.* tom. i. p. 118

borrowed lights. Many of their modern writers also, and several of their judges, especially lord Mansfield, have been much indebted to this source; and their pages and judicial decisions are often illuminated by the pure and lustrous wisdom of Roman jurisprudence

But notwithstanding the long and pointed opposition which has been made to this system of law in England, it has at all periods found its ardent and impassioned admirers in that country. Great Britain, by her inborn love of wisdom, equity, and sound learning, has unconsciously, in various ways, advanced the progress and fame of the Civil Code. English law writers, counsellors, and judges, have of late been more willing, not only to adopt, but to acknowledge the excellencies of this law; thus passing on it a higher eulogium than had ever been accorded, as their admiration had to contend with national pride and vanity, and to overcome prejudices of very ancient standing. Although the jealousy, which would have occluded from the Common law courts the equity and sense of the Roman code, has been deeply radicated, and, until of late, quite unshaken, yet we find this system to have at all times prevailed almost exclusively in the Ecclesiastical courts, the courts of Admiralty, the court of Chivalry, and the courts of the Universities; and that the proceedings in the courts of Chancery and Exchequer, are in conformity with the rules and practice of that law. It is likewise manifest, that much of the law of legacies, wills, trusts, bailments, executors and administrators, guardian and ward, contracts, occupancy, custom, prescription, accession, &c. is derived from this fountain; and that, maugre the dislike of lord Coke and others, numerous other branches of the English law are greatly indebted for much of their excellence to the experience and learning of

the civilians Brown, an interesting and sensible, though by no means classical writer, says that he scarcely ever met with a point, not connected with the Feudal law, of which, if English law books did not satisfy the doubt, he has failed to find a resolution in the Civil Law. Vid. Brown's Civ. Law, p. 13, No. 21.

Chief justice Holt, one of the most liberal and enlightened judges that England ever knew, was obliged occasionally to indicate his respect for this law. In the case of *Lane v. Cotton*, 12 Mod. 482, having need to cite the Civil Law, he justifies his reference to it 'inasmuch as the laws of all nations are doubtless raised out of the Civil Law, as all governments are sprung out of the ruins of the Roman empire; for it must be owned that the principles of our law are borrowed from the Civil Law; therefore, in many things, grounded on the same reason.'

It is conceded on all hands, that sir Leoline Jenkins, in framing the Statute of Distributions, 22 and 23 Charles II. had Justinian's 118th Novel distinctly in his view; and that in all cases of intestacy, *personal estates*, under that statute, devolve, with but trivial exceptions, according to the regulations of that celebrated Novel; and if so, where shall we seek for the lights of construction and all the analogies of that statute, with more confidence, than in the Civil Law itself, and in the writings of its expounders? The descent of *real estates* in this country, being generally very similar to the devolution of *personal estates* under the statute of Charles, opens to us a still more extensive field of inquiry on this subject, and refers us again to the Novel in question, and to such lights as may have been shed on it by the writings of the civilians. Again. Our doctrine of *set-off* is essentially the same as that of *compensation* in the Digest and Code. In examining the collected

view of this subject, as it is presented by M Pothier in his *Pandectæ Justinianæ*,* we find a digest of those principles, which being amplified in judicial opinions, and in the commentaries of authors, form our treatises on the law of set off and on a further reference to the Code,† and to the annotations of civilians, we become still more satisfied that these English opinions and treatises, so familiar to us, are but reiterations of doctrines, which were perfectly familiar to the ancient Roman jurisconsults, and which have become gradually incorporated with our jurisprudence, with too little acknowledgment, as we think, to the source whence they evidently sprung. Had Mr. Montague in his treatise of set-off, and Mr. Babington, in his late work on that subject, pursued their explorations beyond the narrow confines of their own municipal law, and examined any of the numerous volumes of the continental legal writers, or the Digest and Code, they would have imparted to their works much additional value.

On the important subject of *contracts* the Civil Law is peculiarly rich, and accurate, and, did our limits admit, it would be no difficult task to point out how largely indebted, though silently and almost furtively, is the English law, to this *magnus parens* of all modern law.‡ And yet how little express reference is made by Powell, Comyn, and Chitty, to the Roman Code! It is impossible to read even the Institutes of Justinian, without perceiving the superiority, not only in classification, but in closeness and accuracy of thought, of the Roman over the English law of contracts; and this conviction cannot fail to be greatly strengthened after reading in the Digest and Code, the appropriate titles; or the law of contracts

* Vol. ii lib xvi tit ii. p 92.

† Code iv 3, 1

‡ Vide ante p. 399, &c. for a list of British, American, and Continental works on the law of Contracts

as collected under various titles by Pothier in his Pandects, or as it is set forth by him in his treatise on the law of obligations. It would be a vain attempt, in the short compass of a note, and we might say even of a moderate volume, to state and to illustrate, the numerous instances of the dependence of our law on that of the Roman Code, and we may adopt with perfect truth the remark of Arthur Duck, when speaking of the authority of the Civil Law in Scotland, that it obtains here as there '*in casibus omissis*;' for it is unquestionable that there are large departments of our jurisprudence, in which, (in the absence of more authoritative law,) we may, and ought to resort to the Civil Law for light, for instruction and for authority. We say authoritative law, because, having adopted the particular system, as a portion of our scheme of jurisprudence; and that having sprung from the Roman code, we are bound '*in casibus omissis*,' (and so we have done by long usage) to resort for illustration and authority, to the pages of the Digest and Code, in the same manner, and with the same view, as we at present resort to the modern British authorities on innumerable other subjects. In our courts of Admiralty and maritime jurisdiction, also, and in our courts of Equity, on various subjects, as likewise in the law of Contracts, of Executors, of Bailments, Legacies, Presumptions, Accession, Confusion, Extinguishment, Set-Off, &c. &c. we should appeal to the Civil Law, with as much confidence that we were resorting to an authoritative source, (when our own special provisions have failed,) as we now do to the reports of decisions in Westminster Hall, on the law of bills of exchange, policies of insurance, or charter parties; and in citing the law of Rome, or the writings of the civilians, on such topics, we surely are to regard them as more binding on our courts, than are citations from Colebrook's Digest of Hindu laws, or from the Codes of Frederick, or of

the emperor Napoleon. The law of Rome in such cases, is not, as has been justly remarked by a Scotch writer,* '*our law* from any authority, either of the *Republic*, or of the *emperors*;' but it is *authoritative*, because we have made it so, by adopting certain systems of law, which were brought into existence, and made known to our forefathers only by the Romans, and these systems are to be found in the Justinian and other Roman codes. The fact is indisputable, that whilst the British nation has copiously supplied itself, for eighteen centuries, from the streams of the Civil Law; and is perhaps, more largely indebted to them than to any other source whatever, not even excepting the Feudal, it still continues to withhold, in a considerable degree, a frank acknowledgment of the full amount of the debt which has been thus contracted. There are, indeed, a few brilliant exceptions, several of which we have already stated. In this open liberality, and high respect for the Civil Law, lord Mansfield was so conspicuous, as to revive, to some extent, the ancient jealousy of the Roman law, which commenced even earlier than the reign of Stephen, and which in the time of James I consigned Cowell to a prison, and his work to the flames' Still, this great modern judge, actuated by the same ingenuous and expanded views which had guided Ld. Holt, continued to quote with approbation, the writings of the civilians; and, in disregard of the anathemas of Junius and his followers, he conformed his decisions to that law, whenever he conceived himself bound to appeal to its equity and sound sense, in order to mitigate the severity, or to supply the defects of the Common law.

In further confirmation of our views, we cite a remark of our distinguished countryman, the late Dr. Arthur Brown, of the Dublin University, who observes that 'He who is desirous of

knowing with a scholar's mind, the rudiments and origin of the rules laid down for his instruction, must be a disciple of Justinian as well as of Coke. How, it may be asked, is this position consistent with a truth universally known, that the foundations of the Common law were laid in the *feudal* system? Feudal principles, indeed, supplied the foundations, but were utterly incompetent to the superstructure. They breathed only war. Strangers to commerce and the arts of peace, they regarded landed property in the hands of the vassal, only as the instrument of military strength, and the source whence the lord derived his supplies. On the subject of contracts, covenants and obligations, those vast fields of modern controversy, in short, on all things called by some metaphysical writers, 'things purely rational,' 'moral entities,' 'entia rationis,' that system was silent.*

But it is by no means to the student of the Common law only that we recommend an extensive acquaintance with Roman jurisprudence. For, as statesmen, politicians, and writers on the law of nature and nations, have extracted much of what is valuable in their documents and works from the Civil Law; it necessarily follows, that those who aspire to sound and extensive knowledge on the law of nations, will find another motive for frequently resorting to the pages of the Roman code. 'In matters of intercourse between one nation and another,' says Strahan in his preface to Grotius, 'we have no other law to go by, but the law of nations; and this law is chiefly grounded on the rules and maxims which are laid down in the Civil Law, and which have been received by most nations as the rules of justice between one nation and another. so that to understand the law of nations thoroughly, and to be able to comprehend the reasoning of the authors who treat thereof, it is absolutely necessary to have a know-

* Brown's Civil Law, vol. i. p. 11

ledge of the Civil Law, as one may easily perceive by looking into Grotius, Puffendorf, and other writers on that subject. Hence our ancestors,' continues Strahan, 'in their great wisdom, thought proper to employ generally, in all negotiations with foreign courts, and in treaties of peace and commerce, persons well skilled in the Civil Law, and law of nations; and although in solemn congresses, for the greater lustre and splendour of the embassy, it was necessary to employ persons of the first rank and quality, yet to ease them of the great weight of affairs, they were always accompanied by persons of inferior rank, who might aid them by their knowledge of the Civil Law.' Of the same opinion was Albericus Gentilis, who says that 'all nations or sovereign princes, in disputes which may arise between them, are to be governed by the Civil Law,'* and, in more modern times, we find a distinguished English judge to say, that a great part of the law of nations is founded on the Civil Law.†

But this code, valuable as it is, has in common with all the labours of man, its blemishes and imperfections. Like the sun it has numerous spots, which to the general eye obscure not its lustre. It has some useless learning, and, in parts, breathes a spirit of severity and cruelty, altogether unknown both in England and this country. The too great extent of parental authority, the severe relation of master and slave, and of debtor and creditor, the penal code, and criminal procedure generally, are prominent defects.

We should be happy to present to the student, would our limits permit, a brief outline of the origin, progress, and effects of English hostility to the Roman law. It became visible shortly after the conquest, and alternately subsided, in a

* Vid Gentl De Jure Belli Lib 1, Cap 5

† Sir William Scott, in the Swedish case of Convoy, 1799

degree, and revived with exacerbation, until at length, the good sense of all political parties, but only within the last half century, began to perceive the manifest distinction between the just detestation of the arbitrary principles to be found in the *jus publicum*, or constitutional law of the Romans, and the equally just admiration of their *jus privatum*,—so full of wisdom and equity. The folly of condemning, *en masse*, the Civil Code, because of a few political or other doctrines, abhorrent to the free opinions of the people, is now well understood in England. It would be no longer possible, in that country, for any future Duke of Exeter, to introduce the rack or the *brake*, those instruments of torture, under the auspices of the Roman law, nor for any future James, for the maintenance of tyrannical prerogatives, to repose on the obnoxious declaration, ‘*Quod Principi placuit legis habet vigorem.*’ Nor will there be, hereafter, any need for a Biacton, a Fleta, or a Thornton, to endeavour to explain away, or to deny the genuineness of this celebrated passage; nor shall they need a Selden, in turn, to show how vain is such an attempt. The fact is that the *Lex Regia* does contain the arbitrary maxims imputed to it; but, if they were greatly more abundant and pervading than is the case, they by no means justify the sarcastic remark of Professor Christian, that they constitute the ‘Magna Charta of the Civil Law.’ As well might the arbitrary proclamations of the eighth Henry be called the magna charta of England, or the wild prerogative rights accorded to many of their kings, be adduced as a reproach against the vast system of British jurisprudence. There were not wanting, at all times, even in Rome, those who openly protested against these imperial declarations; and that the English authors just mentioned, as also the sage Gravina, the learned Heineccius, and the ‘erudite, rambling, and spirited’ Dr. Taylor, should still doubt whether

the maxims in question did confer an absolute authority on the prince, seems to us not a little remarkable, and shows, very clearly, into what strange opinions even the learned may be betrayed, by an overweening admiration of the topics which engage their pen. And although the Theodosian Code contains the following Constitution '*Contra ius Rescripta non valeant, quocunque modo fuerint impetrata. Quod enim publica iura præscribunt, magis sequi iudices debent,*'* yet the explicit language of the Digest, (we now give the passage as translated by Gibbon,) is of a very contrary character. 'The pleasure of the emperor has the vigour and effect of *law*, since the Roman people, by the royal law, have transferred to the prince the full extent of their own power and sovereignty'† This passage, it has been said, was introduced into the Justinian Digest solely on the high authority of Ulpian, but we do not perceive how this can diminish its force, as it must have been retained, *ex industria*, in the Justinian Digest, being altogether too remarkable to have been, sub-silentio, or accidentally, introduced. Nor is the other theory a more happy one, which has been advanced by others, viz. that even Ulpian is not to have the sin of this passage imputed to him, but that it originated with the emperor Justinian himself, and is a spurious doctrine interpolated by him to give legal countenance to his arbitrary power. This, however, would seem to be obviously unfounded. The Theodosian Constitution, which we have just cited, seems to allude to arbitrary imperial edicts and rescripts, and though that emperor repudiates the power for himself in that Constitution, it seems to speak to the fact of its prior existence. It is quite probable, therefore, that the writings of each of the quintumvirate, (composed of Caus, Papinian,

* Const. 1, Cod. Theod. 1, 2

† Dig. lib. 1, tit. 4 vide also, 1 Pothier & Pandectæ, p. 15, 4to. edit.

Paulus, Ulpian, and Modestinus, and which were declared, by this same Theodosius, to be valid law; and that in cases of conflict, plurality should decide,) contained a passage to the like effect with the one so long ascribed to Ulpian alone, or to the artifice of Justinian and his compliant Tribonian; and further, that Theodosius, whilst he took the merit of rejecting, by his Constitution, the high prerogative of arbitrary power, received it back again, through the medium of the writings of those oracles of the law. Be this as it may, the question as to the genuineness of the text, and the probability that it was a known doctrine, long anterior to Justinian, is now conclusively established by the recent discovery, by Niebuhr, of the *Institutes of Gaius*, which have been published by Prof. Goschen, of Gottingen, in 1820. This manuscript, which, like Cicero's treatise *De Republicâ*, has been brought to light, after its loss had been deplored during so many centuries, reveals the fact that neither Ulpian, nor the Emperor Justinian, is to be charged with originating this much spoken of passage, but that, being a known doctrine of the Imperial Law, it, with others of the *Jus Publicum*, was inserted by the compilers of the *Digest*, not at the dictation of Justinian, nor on the sole authority of Ulpian, but as an acknowledged maxim of law. Gaius says, '*Constitutio Principis est, quod Imperator decreto, vel edicto vel epistola, constituit. Nec unquam dubitatum est, quin id legis vicem obtineat, cum ipse Imperator per legem imperium accipiat.*'*

* Vide *Gaii Institutionum Commentarii* iv. Com. 1, sec. 5, p. 3, of the Berlin edition of 1824. ☐ The student will perceive that the initial letter of the name of this writer is equally C or G. On this subject M. Pothier remarks, '*Modo enim CAIUS, modo GAIUS Scribitur. Rationem indicat Quintilianus Instit. Orat. lib. 1, cap. 7, quia quædam Scribuntur aliter quam pronuntiantur. Nam et Gaius littera C, notatur.*' Vide Pothier's *Pandectæ*—tom 1, *Prefatio* xxxiv.

Leaving this, and similar inquiries, which, if indulged in, would extend our note beyond its contemplated size, we have to remark, as to the utilities of this study, that statesmen and politicians, and judges who administer the laws of the Admiralty, or those which appertain to maritime concerns, judges also who have to expound the law of nature and of nations, and those likewise who dispense justice in courts of equity,—and all lawyers, who pursue their vocation in those tribunals respectively, are justly to be reproached, if they neglect the only living fountains whence the first principles, at least, of these various systems have evidently sprung.

As to the comparative excellence of the Civil and Common Law, it would be vain and rash in us to attempt to decide. Each has, without doubt, its merits and its blemishes, some peculiar, and others common to both. A large portion even of the *Jus Publicum* is full of wisdom and of justice, and when we reflect on the prevailing equitable spirit of the *Jus Privatum*, and the numerous distinctions which it contains, founded on the most accurate reasoning,—when we refer, in the Roman Law, to the subject of contracts, legacies, interpretation, presumptions, evidence, the acquisition of property *jure naturæ*, the natural division of things, and the equally natural rules of succession as to all kinds of property, the doctrines respecting those who are *non sui juris*, the relations of citizens and aliens, the law respecting unsolemn wills, the revocation of wills, the various implied emancipations, the formal proceedings in their courts, the operation of judicial sentences, and innumerable other topics,—when all these pass in review, we cannot but express the most unfeigned surprise and regret that this study should have been so much neglected in England for nearly five centuries; and that, in our own country, it should have made no very sensible progress beyond a small class of indivi-

duals, of great eminence in their profession. If the two systems be accurately compared, and the Common Law be taken *stricto sensu*, we presume the decision of those skilled in both would be largely in favour of the Imperial Code, as a full and nearly complete digest of the principles of public and private law. But such an inquiry, however useful, is not likely to be made by one at once competent and strictly impartial; and on whichever side the scale might turn, is by no means so important to us as to the people of England, because, in very many important particulars, we have discarded the evils which grew out of feudalism, and have conformed our jurisprudence to models approaching, very closely on many subjects, those of the Roman law. Be the excellencies and defects of either code what they may, a sensible mind will not hesitate to seek, in each, the former only; and will not, out of a blind admiration of the one system, withhold the tribute of merited praise from the other.

The great defects of the Civil Code, as already mentioned regarded the rights of persons, rather than of property. The *jura rerum*, in every possible modification, were defined with surprising accuracy, simplicity, and equity. On this subject Dr. Brown remarks that 'the civilians knew nothing of that puzzled distinction between *real* and *personal* property, which pervades our legal system of ownership, and which causes different species of property to descend in varying lines, and to different persons, which obliges the heir, who controverts the pretended will of his ancestors, to litigate a double suit, before a temporal, and also a spiritual tribunal, perhaps with opposite success, and repugnant decisions, which deprives a great part of the community, possessed of valuable leasehold interests, of that share in the constitution, which is possessed by the impoverished cottager at their door; which

involves the creditor in endless labyrinths, by discriminating different modes of executions, adapted to the various distinctions of the debtor's property liable to his demand. They knew no feudal fictions, which hamper our alienations, and load us, two hundred years after their causes have ceased, while the sage trembles to touch the web, now become part of the constitution. Simple and uniform in their regulations, clear and pellucid in their divisions they subjected lands and goods to the same dispositions, and transmitted them in the same conduits to posterity.' 'By that law,' adds he, 'all property *gavelled*, with us gaveling is almost considered as a punishment, and has actually been made the instrument of penal laws; yet gaveling is the policy of republics; it hurts the pride of families; it prevents the growth of estates; it forbids the towering castle to rise, and the immense demesne to spread, and swell the arrogance of primogeniture. But the Romans revered not the first born; liberty did not glory in the vast possessions of her sons. The conquerors of the world were taught to subdue themselves, and to found their pride on the extended dominions of the state; content as individuals with a limited patrimony, their ambition as a people was to acquire unlimited dominion. They followed the original impulse of nature and reason, implanting in the parental bosom equal love to all the progeny. The doctrine of primogeniture may be adopted by legislators, and commended by philosophers; but it certainly originated with barbarians, and was nursed by savage pride. The preference of the male to the female line, was equally unknown at Rome, nor was the daughter, any more than the younger son, left a dependant on the mercy, or a claimant on the justice, of the elder brother. The absurd consequences also, which arise from our marked distinction between the whole and the hal

blood, are the offspring of the feudal law, and strangers to the jurisprudence of Justinian.*

In the foregoing extract from Dr. Brown, the American law student cannot fail to recognize the superiority of the Roman over the Common Law, in the various particulars so forcibly and feelingly adverted to by the learned author; and he will also, with pleasure, bear in mind that in all of these, and in numerous other particulars, in the *Jus Præteritum*, we have conformed our law to the Roman model. The truth is, that the numerous departures of the American law, which have taken place since the middle of the last century, from the law of our forefathers, have been little else than so many approximations to the Roman code; and that even the *Jus Publicum* as constituted in the days of the Republic, has not been wholly without an influence on the constitutional structure of our forms of government. The political, or constitutional law of Rome, though certainly objectionable in many particulars, was, in the main, admirably calculated to elevate and glorify the nation, and render the people happy. If arbitrary maxims are occasionally found, and despots often governed, yet the Romans, from the origin of their city to the final extinction of their vast and splendid empire, will be found to have enjoyed as great a share of political and civil liberty as any nation that ever existed, whose history passes through so long a succession of ages. That the people are the source of all power, that sovereignty resides essentially in them; and finally, that government is the result of a contract between the people and their rulers, is more distinctly recognized in the laws and history of the Romans, than of any of the ancient, or of even most of the modern nations. This is to be found even in the arbitrary rule of the Digest, to

* 1. Brown's Civil Law. 27.

which so much has been objected for though the sentence commences with the declaration *Quod Principi placuit legis habet vigorem*, it terminates with the fullest admission that this was a concession from the people of 'their own power and sovereignty' to their prince.

Such then, is the unrivalled excellence of the Civil Code, to which no eulogium can do justice, a code replete with instruction for the statesman, the lawyer, and the general philosopher. Should it then be neglected by the American student? Are there not weighty reasons why the learning of this country should be enriched and adorned by the splendid results of the erudition, wisdom, and labours of jurists, aided and fostered by imperial munificence? Have we not, in our codes, adopted and amalgamated the doctrines of the civilians to a greater extent than our mother country? If this be accorded, can any sensible reason be advanced, why this system should not constitute a primary branch of the course of an American law student? Similar and no doubt stronger motives could be urged, why this law should be regarded, than have been advanced in favour of the learning of the feudalists.* Let the student then of this country henceforth seek for the depths, the refinement, and polish of his legal knowledge, in the abundant wisdom of the Imperial Code: let him never consider his legal course of reading by any means complete, until he has read at least as extensively on the Civil Law, as is here prescribed.† In this branch of his studies he will find much to admire, and but little to condemn, much to sharpen and invigorate the understanding, and but little which is not worthy the dignity and excellence of humanity. In it he will discover a perspicuity and precision of legislation, rarely to be

† Vid note 1 on the second title of this Course

† We allude to the works noted in the Syllabus, ante p 479 to 483

found, and in the definitions, maxims, and legal phraseology (often conveying the same law, more vaguely expressed in the statutes of our own country, or the writings of our lawyers) a remarkable clearness and adaptation of language to the sense, not a little favourable to the memory, and certainly greatly so to the liberty of the citizen.

In fine, no one aspiring to the character of lawyer or statesman, should calculate with any certainty on attaining distinction in either, without a competent knowledge of a system which forms a conspicuous feature in the codes of England, Germany, Italy, and Turkey,* Scotland, France, Holland, Spain, and Portugal, and, without doubt, of all of the states in this western world.

It may be well to state that this vast body of law, as reduced by order of the emperor Justinian, and which is known by the name of the *CORPUS JURIS CIVILIS*, embraces, 1st, *THE INSTITUTES*, in *four* books, each subdivided into titles, and the whole embraced in one volume, comprehending the rudiments or elementary principles of the Roman law. 2d, *THE DIGESTS* OR *PANDECTS*, in *fifty* books, subdivided into an unequal number of titles, in all, four hundred and thirty-two. These contain the works or opinions of more than *one hundred* distinguished civilians. No less than *two thousand* treatises, containing, as it is said, three million lines, were abridged to one hundred and fifty thousand lines, which now constitute the fifty books and the nine thousand one hundred and twenty-three laws, or fragments of laws of

* The Turks use the *Basilics*. The *Basilica* were composed by the emperor Basil and his son, in the Greek language, chiefly from the Justinian Code. They are divided into seven volumes and sixty books. Indeed the *Basilica* nearly superseded the Justinian Code in the East. They were published at Paris in 1617 by Charles Annibal Fabrot. [Not Fabrotti, as the late Mr Butler erroneously calls him, vide *Horæ Juridicæ* p. 61.]

the Digest. So polished is the style of this work, that it is a common remark, that were all the Roman authors lost the Latin language might be recovered by aid of these Pandects alone. 3d, THE CODE, in twelve books, and seven hundred and sixty-five titles, comprehending a collection of Imperial Constitutions. This *Constitutionum Codex*, a short time after its publication, was augmented and remodelled by the order of Justinian, into its present form, and no remains of the first compilation are now extant, except as they appear in the new work, which passes under the general name of the Code, or *Constitutionum Codex*, and, with those who are particular in such matters, under the more special designation of *Codex Repetitæ Prælectionis*. 4th, THE NOVELS, *Novellæ Constitutiones*, one hundred and sixty-eight in number, being a supplement to the Code. These contain the decrees of various emperors on new questions. The whole of this Justinian compilation was published between the 21st November, 533, and some unknown month, in the year 539; and forms a body of law which, though not arranged with the strictest regard to method, is still more extensive and complete in principles, and accurate definitions of legal words, than any that the world has ever known

(Note 2) GIBBON'S CHAPTER.—We have no hesitation in strongly recommending this chapter to the attentive perusal of the student, as containing a succinct and masterly historical view of the Roman law. As a summary it certainly stands unrivalled, and as a mere outline only is it to be read. We cannot therefore subscribe to the opinion of the editor of sir William Jones's *Treatise on Bailments*, who thus expresses himself concerning this chapter: 'This is only a brilliant *coup d'œil* on a subject which it was a part of Mr. Gibbon's

historic duty to have examined with microscopical attention. The many pages he has employed in the malicious detail of theological controversy, and the numerous notes in which he has perpetuated the scandal and obscurity of insignificant writers, might have been occupied with disquisitions and illustrations more creditable to the candour and talents of the historian.)

We entirely coincide with the learned editor, that Mr. Gibbon might, by devoting more time to it, have rendered his chapter more learned and valuable. He might have amplified it into a volume, or an extensive treatise on the Civil Law, but his duty, as historian, surely did not require this of him. In that capacity he has, as we conceive, fully redeemed his pledge, and even exceeded the usual limits assigned, in this point, to the historian. Mr. G. without doubt, could have better employed his time in composing a treatise on Roman jurisprudence,, than in meddling with theological polemics; yet his chapter, for what it professes to be, is luminous, learned, succinct, and satisfactory.

But the high estimation in which Mr. Gibbon's outline is held on the continent, where the Roman law has for so many centuries been thoroughly studied, and elaborately written on, will be regarded as strong evidence of its high merit. The translation of this chapter into the German language, was among the earliest labours of Professor Hugo, of Göttingen, to which he added ample notes. He was, indeed, at that time only about twenty-five years of age; but the wisdom of his selection, was most gratifyingly confirmed by the universal reception of the work, and the great praises bestowed on the accuracy and learning of the English historian. Only a few years after this, viz. in 1792, Hugo's great work was commenced, which is comprehended in no less than seven volumes,

and may be regarded as a thorough *Course of Study for Civilians*. That Mr Gibbon's chapter was frequently resorted to as a *catalogue raisonné*, and for other purposes, there is no doubt. The high regard for Mr. Gibbon's researches, by so profound a civilian as Prof. Hugo, is of itself strong proof of its great merit. It has likewise been translated into French; and in 1821, was considerably improved by the addition of notes, &c. by Prof. Warnkoënis, of the University of Liège, one of the Collators of the *Thémis*, and also by M F Guizot, at Paris, in which periodical, (the *Thémis*,) however, this chapter of Gibbon's work has been severely reviewed by M. Du Caurroy de la Croix.*

(Note 3.) BUTLER'S *HORÆ JURIDICÆ SUBSECIVÆ*.—The portion of this small volume, which treats of the Roman law, commences at page 20, and terminates at page 72. It was published by the learned author in 1804, and has passed through several editions, of which the first American appeared in 1808, with some annotations by an eminent American civilian. This is a useful little volume, and as a brief outline, answers a valuable purpose for mere beginners, but is not entirely to be relied on for accuracy; and cannot be regarded as a very creditable specimen of Mr. Butler's researches into the historical, biographical, and bibliographical materials of the Roman law.

Succinct and imperfect as this sketch certainly is, we have reason to apprehend that, both in England and this country, many students have looked to it as the principal source of their acquaintance with the history of the Roman law'. We shall therefore give it a more extended notice than its merits would otherwise have called for.

The essay is divided into seven sections, the fifth of which is again divided into ten subsections. The *first* takes a very brief notice of the credit which is due to the early history of Rome. The *second* is occupied in a concise geographical view of the limits over which the Roman laws extended. The *third* explains the nature of the *jus civitatis*, and the various kinds of citizens. It is so worded, however, as to betray a young student into the error of supposing that *slaves* formed a fourth class of Roman citizens, the three first of which were the patricians, the equites, or knights, and the plebeians. The fact, however is that slaves were not citizens, nor did ever the generical term '*populus*' embrace them; they were viewed merely as chattels or property, and did not come under the head of '*persona*' in any of their laws, or treatises '*de statu hominum*.' They were aliens to the civil state, and, though they belonged to the genus *homo*, in some very limited degree, they found their place, in that law, under the head of *things*, *res*, and not of *personæ*, or citizens. However brief an author may see fit to be, it is essential that his classifications and definitions should be clear, and strictly correct. This section further proceeds to notice the divisions into clans, families, and individuals—then to advert to the *Jus Latii*, the *Jus Italicum*, the Provinces, Mancipia, Præfectures, Confederate towns in alliance with Rome; and lastly, to the *Peregrini* or aliens; all of which are disposed of in four pages! The *fourth* section takes up the subject of the government and form of legislation; a hasty sketch is given of the form of government established by Romulus; and of some other matters at a subsequent period,—but with no regard to method, and with still less to that fullness which may be found even in a brief analysis. The *fifth* section proceeds with a historical view of the Roman law, which he divides into nine periods, viz first, from the foundation of Rome in 753, to the introduction of the xii.

Tables in 301, U. C Secondly, the æra of the Tables, in which he gives some account of the Decemviral law, two tables being subsequently added to the first ten; how they '*perished*' in the sack of Rome by the Gauls, their restoration after the expulsion of the Gauls, their perfect existence in the time of Justinian; that fragments only now remain, which have been edited by Gothefrede, Terriasson, and Pothier, and lastly as to the variety of the account we have of the journey into Greece by the Decemvers; all of which is disposed of in three pages. In the third subsection he notes the insufficiency of the decemviral laws, and the introduction of a vast mass of jurisprudence during the remaining period of the republic he alludes to the *written* law, which embraces the *Leges*, *Plebiscita*, and the *Senatus-Consulta*, the *unwritten*, which comprehends the *Jus Honorarium*, the *Actiones Legis*, the *Fœrmulæ*, the *Disputationes Fore*, the *Responsa Prudentum*, &c. and this brings the history down to the year 46, before Christ. The fourth subsection remarks on the history of the law during the reign of Augustus, and thence to the reign of Hadrian, by which time the government had become absolute, the powers even of the Senate, having vanished, it being then little else than a nominal council to register the Emperor's ordinances, and a court for the decision of great public causes.

The fifth subsection traces the history of the law as established during the reign of Hadrian, the sources of law then being the Imperial Constitutions, under the various forms of Rescripts, Edicts, Epistles, Sancuons, Orations, and Annotations, he notices the arrangement by Julian of the Prætor's edicts, in fifty books, under the title of the Perpetual Edict, fragments of which still remain, he adverts to the persons by whom they were collected and edited; and the formation of the Gregorian and Hermogenean Codes, after the time of Hadrian,

and this brings the history down to the reign of Constantine, in 306 after Christ. The sixth period of the Roman law is the subject of the next section, in which he notes its state and progress during the time of Constantine, and to the reign of the second Theodosius. The seventh subsection remarks on the establishment of the Theodosian Code in 438, which embraces all the Constitutions from 312, the period of Constantine's conversion, to the time of the publication of this Code; on its reception in the west by the edict of Valentinian III.; and its giving place in the east, to the Justinian Code. In the next subsection is traced the eighth and most important period of the history of Roman law. This details the compilation by Justinian of the *Codex Papiæ Prælectionis*, in 528; of the *Institutes* in 533, the *Digest*, or *Pandects* in the same year; the *Code* in 534, the *Novels* in 535 to 539. In the next subsection, the ninth period of the history, he traces the fate of the Justinian law, its extinction in the west, in the year 753, when the Barbarians overturned the Empire, in the east its lingering till the taking of Constantinople in 1453. In this section, mention is made of the translation of the *Pandects* into Greek, during Justinian's life, and of the formation of the *Basilica*, in the reign of Basilus, and of his sons Leo and Constantine; which is an epitome in Greek, in sixty books of the Justinian Code, &c.; forty-one of which were published at Paris, in 1647, by Fabrotti, (should be Fabrot,) in 7 vols. fol. and four others, in Meerman's *Thesaurus*. In the last subsection, the author speaks of the revival of the study of the Civil Law in consequence of the discovery of the *Pandects* at Amalphi in 1137; by whom they have been collated, the principal editions of the *Pandects*, &c.

In the *sixth* section he notes the principal schools in which the Civil Law has been taught, since its revival: and in the

seventh and last section, he gives some account of the influence of the Roman law on the jurisprudence of modern Europe. It is obvious that these topics are too numerous, and important to be treated in fifty-two octavo pages of large type. We have been induced to make the foregoing analysis (in which we have occasionally supplied some defects,) because Mr. Butler has given no index to his work, and also that it may serve as a tolerable outline of the remarkable epochs in the history of Roman law, to be adverted to at any time, when Mr. Butler's volume may not be at hand; or, for those who may not possess it. It is evidently rather a hasty production, and bears with it conclusive manifestations that, at that period, at least, of Mr. Butler's life, he had not made the Civil Law a subject of any very deep or cautious research. It is certainly not to be compared with Mr. Gibbon's *coup d'œil*, and as it could have been made much more satisfactory without any material increase of size, we think the author is entitled to but little credit for it.*

(Note 4.) DR. ELLIS'S SUMMARY, &c.—This admirable little work is the production of the Rev. Dr. Ellis, published by him anonymously, in the year 1755. It is a summary taken from Dr. Taylor's *Elements of the Civil Law*, and indeed contains most of what is valuable in that work.

Mr. Gibbon, speaking of Taylor's production, remarks 'that the laws and manners of the different nations of antiquity, concerning forbidden degrees, &c. are copiously explained by Dr. Taylor, in his *Elements of the Civil Law*, a work of amusing, though various, reading, but which cannot be praised for philosophical precision. He is a *learned, rambling, spirited* writer.' Decl. and Fall. vol. v., chap. 46, note 132, 150.—

* Vide post Note 7, on Burke's *analytical history of Roman Law*. A fourth edition of Mr. Butler's *View of the Roman Law* was published in 1830, in connection with his memoir of the Life of Chancellor D'Ague-seau

Ellis's work contains a great deal of learning in a small compass, and is written in a neat and perspicuous style. It is preceded by a valuable essay on *Obligation*. This 'Summary' cannot fail to be a great favourite with every student of the Civil Law. Dr. Ellis is also advantageously known by his translation of Aristotle's Politics.

(Note 5.) BEVER'S HISTORY OF THE LEGAL POLITY OF THE ROMAN STATE.—This work appeared in 1781, and traces the rise, progress, and extent of the Roman laws. It is remarkable rather for research, than originality or genius.

(Note 6.) FERRIERE'S HISTORY, &c.—This is the production of Claude Joseph de Ferrière, written originally in French, and published at Paris, in one vol. 12mo, in 1718. It was translated into English by Dr. Beaver, in 1724, who added a translation of that portion of Duck's treatise 'De usu et autoritate Juris Civilis,' which relates to the authority of that law in England. Ferrière is likewise the author of a Law Dictionary, in 2 vols. 4to; and a treatise entitled '*Nova et Methodica Juris civilis tractatio*,' in 2 vols. 12mo. The little work which is now recommended, is highly worthy of the student's attention. The author, however, is manifestly much indebted, both as to matter and manner, to the distinguished author of the treatise *De ortu et progressu Juris Civilis*. He could not have followed a better exemplar, for Gravina (the accomplished preceptor of Metastasio, and one of the most profound of the early civilians,) is remarkable no less for the great beauty of his style, than the extent of his learning. The accuracy of the more recent researches of the German and French civilians, particularly of those of the present day, have detected various errors even in Gravina. The existing knowledge of the Civil Law, it must be admitted, is far more accurate than at any

former period since its revival. This is owing, in part, to a thorough investigation into all the preceding learning, the gradual accumulation of many centuries, and largely also, to the great excitement produced by the recent discovery of important manuscripts of early treatises, laws, &c., which had been given up, as irrecoverably lost, for ages past. We shall have occasion to note these more particularly hereafter.

Claude de Ferrière, the father of Claude Joseph, was also an eminent civilian. His works are comprised in 6 vols. 4to. published in 1688, entitled '*La Jurisprudence du Code de Justinian, du Digest, des Nouvelles,*' and '*Nouvelle traduction des Institutes de l'Empereur Justinian,*' in 6 vols. Svo. He died in the year 1715, aged 77.

(Note 7.) BURKE'S HISTORICAL ESSAY ON THE ROMAN LAW.—Every student of the Common and of the Civil Law must have perceived how little regard has been paid to historical inquiries into the former, and how largely they enter into the scheme of study of the civilians. With the exception of Mr. Reeves' History of English Law, Dalrymple's History of Feudal Law, and a very few others which we have noted, historical deductions of the constitution and jurisprudence of England have been almost unknown. Even in treatises on distinct portions of our peculiar law, it is seldom that we find them preceded by such inquiries into the origin and progress of the law of the subject as would seem to be essential to their due comprehension, and the legal literature, or bibliography and biography appertaining to these topics respectively, or to the science in general, have, at no time, received the attention due to it. In the Civil Law, on the other hand, historical jurisprudence forms an integral, and a very prominent subject of inquiry. Histories of that law have appeared in every possible

form, in all ages, and in all nations where Roman Law has been cultivated The *Historical School of Jurisprudence* (at the head of which are Professors Hugo, Warnkoenig, Savigny, Haubold, Cramer, and other distinguished civilians of the present day,) is not opposed by one which disregards the 'lights taken from history and chronicles;' for they all agree as to their great value But the antagonist opinions which constitute the existing rival schools respect the practicability and utility of a written code, and also the elements from which it is to be composed, the historical school, in Germany, for instance, urges that the surest sources of applicable law are to be found in the history of the past, that actual experience is more to be relied on than the wisest speculations of theory; that the slowly accumulated wisdom of ages, when carefully collected, constitutes better codes for the different states of the Germanic confederation than any one code that could be formed for them, by the most careful reference to general principles, to the natural law, and to the opinions of philosophical lawyers,—and that the science of law can be gradually improved, more certainly perfected, by historical researches into what has been done during past ages, than by any other means, and, finally, that this is the surest mode of noting all existing defects, and of ascertaining the means of amending them. For the promotion of these doctrines, in opposition to the views of M. Thibaut, and other eminent jurists, a journal of *Historical Jurisprudence* was established, and the controversy still continues Prof Hugo, in the first volume of his great work on the *Course of Study for a Civilian*, very naturally (among other divisions of his subject,) speaks of three cardinal and essential branches of inquiry, viz. —First, What are the existing laws? Secondly, Are they wise and practical? And lastly, How have they grown up and become authoritative? These three inquiries

correspond to Mr Bentham's tri-fold division of Jurisprudence, viz. into Expository, Censorial, and Historical; for Prof Hugo's first inquiry,* as to what is the actually existing and operative law of any state, is strictly expository; his second, as to its excellencies and defects, and the speculations of sound philosophy deduced from all experience of that, and of other states, so that the law may be critically amended, is wholly censorial, and lastly, his inquiry as to the actual origin and progress of existing laws,—then various mutations, and finally, all that appertains to the history of the generals and of the particulars of the science, agrees in every respect with Mr Bentham's last division. Could this method of investigating legal subjects be in all cases strictly followed, jurisprudence could not fail to become one of the most regular and philosophical of the sciences. It seems to us, however, that the order of inquiry should be historical—expository—censorial—for, the object and result of all such investigations is to ascertain the actually operative and existing law and its defects—which seems to require, as a preliminary, these historical researches and the established law being next ascertained, we are then enabled, lastly, to suggest amendments, as the result of past experience and present trial

In our observations on the works of Reeves, Crabb, Dalrymple, &c, we have expressed regret that historical jurisprudence has been so little cultivated by English and American lawyers. An accurate and philosophical history of our law, from the reign of Elizabeth to the present time, would be extremely valuable; and we hope that, ere long, the example of the civilians, and the spirit of the historical school of the continent, will stimulate the legal authors of England, as also of our own country, to make historical deductions of the law an object of primary consideration.

* Vide ante Note 17, on Title ii page 161

Mr. Burke, in his *Historical Essay on the Government and Laws of Rome*, has treated his subject analytically rather than with chronological strictness. On this point, different opinions are entertained; the most usual practice is certainly the latter mode. There are, indeed, certain great epochs in the history of that jurisprudence, which render the inquiry in reference to them extremely natural and convenient. Mr. Burke, however, has mainly regarded the *nature* of his topics, and divides his researches into seven parts, forming the like number of chapters, viz.—1 The Roman Constitution previous to the Empire — 2. The Legislature of Rome during that period. 3 The Pontifical Law. 4 The Prætorian Law. 5 The Jurisconsults, Causidici, Schools of Law. Sects. 6 The Constitution during the Empire. 7 The Jurisprudence, &c., during the same period.

The chronological division of the history of Roman Law has been extremely various. We refer to Note 3, on the present title, for Mr. Butler's division of such an historical inquiry, viz into nine periods; which, with that of Mr. Burke, will sufficiently illustrate the strictly chronological, and the analytical modes of treating the subject.

Mr. Burke's work appeared, at first, anonymously, in 1827, and again, with the author's name, in 1830. It is not, we think, too strong praise to say that it is the best historical view of the Roman Constitution that has yet appeared from the hands of any English civilian or historian, and that it is exceeded by few, if any, of the continental essays on the same subject. The more voluminous German and French works are certainly more thorough and minute in details, but we know of none, of like extent, more replete with useful knowledge and judicious reflections.*

* For a further notice of this work, the student is referred to Note 15, on the present title.

(*Note 8*) **PRECIS HISTORIQUE DU DROIT ROMAIN** — The author of this historical summary, M. Dupin, is a French lawyer, who, for nearly the last thirty years, has been advantageously known as a writer on numerous legal subjects. The fourth edition of this little volume appeared in 1822. Those who may desire a translation, will find one in the *United States Law Journal and Civilian's Magazine*, published at New York, in 1822, but which, we much regret to say, terminated at the close of the first volume. The articles in that journal are written with a great deal of spirit, the topics are well selected, and the volume throughout certainly merited a more extensive patronage than, we presume, it ever received.

(*Note 9.*) **SPENCE'S INQUIRY, &c.** — This volume manifests a good deal of research among the most authoritative sources of continental and other jurisprudence, and by a mind, too, perfectly qualified by nature to achieve the task, but to which it is equally obvious, the author came with no very ample fund of previous knowledge, and pursued it with too much haste to insure laudable accuracy. Mr. Spence seems to be one of a comparatively small class of English lawyers, whom the immense researches of the French and German jurists into the Roman, Feudal, and other continental systems of law, stimulated to similar enterprises. We have read his work with much satisfaction, but had occasion to remark a few of those errors, and even contradictions, which almost invariably attend the investigations of those who write, as much with the view of self instruction as of imparting knowledge to others. Accuracy in such antiquarian legal discussions, as that in which Mr. Spence was engaged is to be found in those alone who have pursued such studies for a great length of time; and who can quietly permit their manuscripts to remain with them for gradual elaboration, and almost hourly correction. But these

defects are but occasional spots on an extensive surface; for Mr. Spence's volume is unquestionably a very creditable and valuable production; and we have alluded to the presence of errors, and of some conflicts of his own opinions, rather with a view of reminding the reader of the intrinsic difficulty of such subjects, and of the great necessity of long and patient inquiry into them, than of disparaging, in any degree, the meritorious exertions of an author in a field, not only new to him, but at no time much in fashion in his own country. It is, moreover, easier for any one to detect errors than to avoid them.

(Note 10) BROWN'S VIEWS OF THE CIVIL LAW — This volume contains the substance of a course of lectures, read by the learned author in the University of Dublin, and was first published, with the second volume, on the Law of the Admiralty, in 1798

Its method is that of Blackstone's Commentaries, as far as the two systems of jurisprudence would admit, and throughout the volume, the student of the Common Law perceives the agreements and discrepancies of the Roman and English laws. The work is strictly elementary; with frequent references, however, to such sources as will enable those disposed to more thorough researches, to pursue them with advantage. A new edition, however, of this work, as also of that on the law of the admiralty, is much needed; for, on both subjects, it must be admitted, that, since Dr. Brown's day, not only great additions have been made to the law and to the sources of knowledge on these subjects, but the general mind has been considerably expanded, and the standard of excellence greatly elevated above what it was at the close of the last century. Even since the second edition of this work, published in 1802, the study of the Civil Law has been immensely improved, by the labours of a class of German and

French jurists, who have prosecuted it with an industry and zeal equalled, perhaps, in no other age, whilst the study of the admiralty law in England, and in the United States, has been cultivated with an ardour, and a depth of research, nearly, if not quite equal, to that of the Roman law on the continent. If Hugo, and Savigny and Pothier, have added lustre to their names, and to the science which they illustrated, Lord Stowell and Mr. Justice Story have surrounded theirs with a like halo; and the science of maritime and admiralty jurisprudence has been made by them to stand out in equal relief.

It is with pleasure we claim Dr. Brown as our countryman. He was born at Newport, Rhode Island, and was educated, in part, at Harvard University. He subsequently became a Fellow of Trinity College, and was appointed Professor of Civil Law in the University of Dublin, which he also represented in parliament.

(Note 11.) *DOMAT'S CIVIL LAW*—This work, entitled, 'The Civil Law in its natural order,' was given to the world by its learned author in 1689, in one volume 4to to which were subsequently added three other volumes. In 1724 an improved edition in two volumes folio, with a supplement, was published by D'Hencourt, and in 1777 M. de Jouy gave a still more valuable edition in folio. In 1721 an English translation was published by Wm. Strahan, LL.D. with remarks on the material differences between the Civil and Common Law. This is the work, the select chapters of which we recommend to the American student. Domat is certainly a learned and scientific writer, but as his work is large, we have designated such parts as are particularly valuable, being about one-fourth of the whole work.

The great improvements of the present day in the science and study of Roman law, have rendered this work of less importance than formerly, but the general student, and more particularly those who do not possess the means of studying this law in the numerous works we have mentioned under the present title, will find Domat's treatise of great value. Indeed, the chapters we have designated, should be read by all, whether they aim at mere elementary knowledge, or a thorough acquaintance with the science. It may be here proper to apprise the student that the title of the work is somewhat calculated to mislead. 'The Civil Law in its natural order,' as treated by Domat, is not the natural order of the Roman law, but rather of the Civil Law of France, as far as it is derived from the Roman sources. Domat is the author of two other works, viz *Legum Dilectus*, and *Le Droit Public*. He was born at Auvergne in 1625, and died at Paris in 1696.

(Note 12) POTHIER'S TREATISE, &c — Were it not inconsistent with the design of this volume, we should delight to dwell not only on the genius, learning, useful labours, but on *the moral* excellencies of this highly distinguished French civilian — but a brief notice of him is all that we can with propriety allow ourselves, as we are apprehensive the present title will be enlarged to an inconvenient, and disproportionate extent. Perhaps no age or country has produced a writer whose legal works have, in so short a time, been so universally and flatteringly received and admired — to the interest of his topics, he has imparted all the advantages of the most clear and masterly arrangement, and all the profundity and richness of learning, without the semblance of affectation, or of pedantry.

Robert Joseph Pothier was born in January, 1699, at Orleans, of honorable parentage. At a very early age he lost his father,

who left him with but limited resources. He was therefore, compelled to supply the deficiency of time, by unremitting intellectual exertion, and to store in his youthful mind, in a few years nearly all the attainments of a mature age and protracted study. He completed his education at the University of Orleans.

At the age of twenty-one he was admitted a counsellor of the Presidial court of Orleans, from which he not only derived lustre, but had the happiness, by his zeal in its interests, to be eminently serviceable to it, and to reflect on it a new and lasting splendour. The next honour which awaited him was the professorship of law in the University of Orleans, in which he succeeded M. Prévot de la Janés in 1750. His learning, industry, amiable manners, attachment to the society of young men, and above all, his talent for instruction, did not fail to render his lectures highly popular and instructive.

So devoted was he to studious habits, and to extreme frugality of his time, that he practically illustrated lord Bacon's doctrine, that marriage and its usual attendants, are but so many 'impediments to great enterprises, and that the best works, and of greatest merit have proceeded from unmarried or childless men,' for M. Pothier confessed that he had neither courage nor time to marry! His soul appears to have been entirely absorbed by his numerous studies, and by works of the purest benevolence, for which his life was equally remarkable. Having attained the seventy-third year of his age, he died in March 1772, full of honours, and universally lamented.

His numerous works are on the most practical and valuable topics of the law, and, with a few exceptions only, are nearly as useful to American as to French lawyers. Sir William Jones, in his treatise on the Law of Bailments, having occasion to notice the writings of M. Pothier, thus expresses

himself, 'I here seize, with pleasure, an opportunity of recommending these treatises to the English lawyer, exhorting him to read them again and again,' and, after adverting to the 'luminous method, apposite examples, the clear and manly style' of Littleton's *Tenures*, he concludes, that the English reader of Pothier's treatises will be 'delighted with works in which all those advantages are combined, and the greatest portion of which is law at Westminster, as well as at Orleans. For my part, I am so charmed with them, that if my undissembled fondness for the study of jurisprudence were never to produce any greater benefit to the public than barely the introduction of Pothier to the acquaintance of my countrymen, I should think that I had in some measure discharged the debt which every man, according to Lord Coke, *owes* to his profession.'

Since Sir William Jones' day, the admirable writings of this great French jurist have become much more known in England, and, we are gratified to find, they are becoming, perhaps, still more so in this country. His works consist of thirty-eight distinct and original treatises, which have been published in various editions. The Paris editions in 28 vols. 12mo, and in 19 vols. 8vo. (the latter of which, we presume, is the last,) and the edition in 8 vols. 4to., are, we believe, all that have reached this country. But there are two other works of great distinction. The first, his edition of the Customs of Orleans, in two volumes, which appeared in 1740, and again in 1760. In France, this work is said to be inestimable, and certainly gained the author great credit and new honours. 'The reputation of M. Pothier,' says one of his eulogists, 'was necessarily extended with the diffusion of his works, and he had, during the course of his life, all the celebrity which a man of science can enjoy. The public voice acknowledged

him as the greatest jurist of his age, or rather as the greatest since the time of Dumoulins,* with whom he was frequently classed. Without waiting for his *death*, the weight of *authority* was given to his decisions, and the highest tribunals have acted upon the citation of his works,—an honour above suspicion, and the greatest which a jurist can receive.† But the work which displayed to the greatest advantage his devotion to the Civil Law, and his indefatigable industry, was an undertaking of great utility, and of appalling difficulty,—no less than the entire new modelling of the Pandects of Justinian. No one, perhaps, was ever better qualified for such an enterprise than M. Pothier. The study of the Roman law had been with him almost a passion, from an early age. Possessed, moreover, of sound health, and exempted, in a great degree, from the usual cares of life, he laboured with constancy and patience on his great undertaking, which he had commenced when not yet thirty years of age, and he completed it in 1748, to the admiration not only of the public of his own country, and of the world at large, but (which is still more conclusive as to its merits) to the critical satisfaction of the most learned civilians of Europe; who, after having studied the work with extreme care, pronounced it worthy of all praise, and cheerfully re-echoed the language of Meerman, that the author was, indeed, *Vir eruditissimus et Pandectarum Justinianæ restitutor felicissimus*. The work is entitled '*Pandectæ Justinianæ, in novum ordinem digestæ, cum legibus Codicis, et Novellis, quæ jus Pandectarum confirmant explicant, aut abrogant*' 3 toms folio.

There have been other editions, the last of which, is the Paris edition of 1818—1820, in 5 vols 4to; and is that

* Dumoulins was styled 'Prince of the French law'

† Vide l Evans' Pothier on Oblig. 33

from which we have made our selections in the Syllabus of the present title. The student will perceive that in this work the order of the *books* and *titles* of the Digest is strictly preserved,—and that the great labour and utility of this new arrangement consists in concentrating and systematizing the scattered materials, so that light and order are imparted to the learned, but rather hasty and immethodical labours of Tribonian and his coadjutors

In 1761, M. Pothier published his *Traité des Obligations*, an elementary and highly scientific work, in which not only the *legal*, but the *moral* causes of obligations are displayed. We have recommended to our student the English translation, by David Evans, esq., which was published in 1806, in 2 vols 8vo. The first volume contains M. Le Trosne's Eulogium on M. Pothier, to which we refer the student for a minute and extremely interesting account of this great civilian. This volume also contains a sensible and well written introduction, by the learned translator, and is throughout enriched and illustrated by numerous notes, chiefly on the English law. As the second volume of Mr. Evans' work is entirely composed of notes, we have recommended the perusal of the first volume only, with the exception of such matter in the second volume as we have designated under a distinct title of this course, as highly worthy of perusal.

Until the year 1821, Mr. Evans' was the only English translation of any of M. Pothier's excellent works,* but in that

* [There is an American translation of the treatise on Obligations, by Mr. Martin, one of the judges of the Supreme Court of the state of Louisiana. The recent abridgment of the original work, which is also adapted to the existing French code, by Molitor, and the new edition by Bernardi, with the same view, we have not seen. They are mentioned in the Paris Thémis, vol 9, 529, as being rather imperfectly executed, as respects the modifications produced in the law by the new code.]

year, a translation of his *Traité des Contrats de Louage Maritimes* was given to the public by our countryman, Caleb Cushing, esq., accompanied with an eloquent and very satisfactory biography of the author, and with notes illustrative of the text, which it is a pleasure to consult, as they are appropriate and accurate, and contain multum in parvo *

(Note 13) SELECTIONS FROM THE PANDECTIS AND FROM THE CODE ON THE LAW OF CONTRACTS—Any science which has been carefully elaborated, is apt to be accurate in its nomenclature and classifications. So, again, this very accuracy contributes largely to the perfection of the science. This is strikingly the case with the Roman Law of Contracts, which, of all the titles of that system, is the most perspicuous, natural, and systematic. It will readily be conceded that the phraseology and classification of this subject, under the common law, are neither sufficiently extensive nor correct, even for ordinary practical purposes. The doctrine of contracts is comparatively of recent origin in the law of England. Feudalism, and a very limited trade and commerce, gave, as we have before observed, but little occasion, during many centuries, for the cultivation of this portion of the law. Nothing, therefore, was more natural, after the decline of feudalism, and the growth of commerce in England, than that its judges should resort to the Civil Law for light on the subject of contracts. Hence it was, that, in one of the earliest cases which occurred on the doctrine of bailments,† Lord Holt promptly adopted the entire system, furnished to his hand, by the Digest, and the writings of the continental

* For further observation on M. Pothier's *Pandectæ*, vide Notes 14, 15, 16, 20, on the present Title.

† *Coggs v. Bernard*, 2 Lord Raymond's Reports, 909.

civilians: and Lord Mansfield, on other contracts, incorporated into the English law doctrines which were no where to be found, but in the Roman text, or in the numerous commentaries of more recent times.*

(Note 14.) POTHIER'S PANDECTÆ JUSTINIANÆ. In the twelfth note on the present title, we brought to the student's notice the great work of M. Pothier, select portions of which are now pointed out, for his careful study. Sufficient, perhaps, has been said to apprise the student that it is greatly preferable to read these titles in the new arrangement of M. Pothier, rather than in the original text. We have only to remark, in addition, that the learned prefatory remarks, which accompany each title; the insertion of illustrative portions from the Code and Novels; and the numerous annotations, &c of the author, render the study of the Digest, as prepared by him, a comparatively easy task, and, to those who have any fondness for the study, a very gratifying one.

(Note 15) PRÆFATIO SEU PROLEGOMENA. M. Pothier's very able Introduction to his Pandects, consists of about seventy pages, and is full of such preliminary instruction as is essential for students of the Civil Law. It is divided into two parts, in the first, he treats of the various sources and divisions of the Roman Law. He gives a historical sketch of the ancient law, denominated *Leges Regiæ* or *Jus civile Papirianum*, so called from Papirius, who in the reign of the second Tarquin, collected and arranged them; and also of the *Actiones legis*, or the *Jus Flavianum*, and subsequently the *Jus Ælianum*, the former so called from Flavius, who first published to the world the formulæ of actions and of legal

* Vide ante, page 336, &c. Note 2, and page 338, &c for further remarks on the learning of Contracts in the Civil and Common Law

procedures, until then kept secret, and the latter from Sextus Ælius, who subsequently made large additions to the Flavian collection. The author then treats of the remaining sources of the Roman law, under the various heads of Plebiscita, Senatus-Consulta, Edicta Magistratuum, Responsa Prudentum, &c.

In the second division of the Introduction, a succinct, but extremely valuable account is given of the Jurisconsults, whose writings or opinions are contained in, or are referred to, in the Pandects, and this series is divided into six classes. The first embraces those who lived prior to the age of Cicero, six in number. The second those who lived during that period, and to the birth of Christ, of which there are thirteen. The third class extends to the reign of Adrian, A. D. 117, and contains thirty. The fourth, of thirty-six jurisconsults, extends to the time of Gordian, A. D. 240. The fifth contains the names of four, whose time is wholly uncertain; and the sixth has three, from the time of Gordian to Constantine the great; in all ninety-two, who have been held *Jurisconsultorum appellatione digni*.

The brief notice which is made of these jurisconsults by the author, is all that is essential to be known of them in the study of ante-Justinianian jurisprudence, but without this knowledge, even the writings of the modern civilians cannot be read with satisfaction, or with complete advantage. We deem such information so important, even to elementary students of the Roman law, that we urgently recommend to their studious attention this portion of M Pothier's Introduction.*

* As a further aid to the student, we have annexed at the end of this note seven tables, which contain in a concentrated form, much valuable information, to which the student of Roman Law will find frequent occasion to

The Introduction then proceeds with a clear and satisfactory account of the various sects into which the Roman lawyers were divided, and furnishes the names of the most distinguished of them who belonged either to the Proculerians or to the Sabinians. This is likewise a subject that ought not be disregarded by modern civilians.

In the third and last division the author speaks of the formation, authority, and history of the Justinian Law, and concludes with some account of the method, and of the object of his new arrangement of the Pandects

We shall conclude the present note with the promised tables, merely observing that the first contains fifteen names of Jurisconsults in addition to those enumerated by M. Pothier; and their arrangement in point of time is also somewhat different.

TABLE I

NAMES of the principal Roman Jurisconsults, with the number of times they are respectively quoted in the Digest, and the number of Fragments, or laws there inserted, which are taken from their works [*Vide Edmund Plunkett Burke's Historical Essay on the Laws and Government of Rome, Appendix B**]

I JURISCONSULTS ANTERIOR TO THE AGE OF CICERO

No	No of times quoted in the Digest	No of Fragments extracted from their works.
1 P. or C. Papyrius.....	2	"
2 Appius Claudius, (<i>Decentius</i>) ..	2	"
3 Appius Claudius Centumalis Cæcus ..	3	"
4 Cn. Flavius ..	2	"
5 P. Sempronius Longus Sophus ..	1	"

resort. These tables are from the works of two very eminent civilians of the present day, M. Berriat—St. Prix, (*Histoire du Droit Romain*, Paris, 1821, 8vo) and L. A. Wernkoenig, (*Commentarii Juris Romani Privatæ Leodni*, 1829, 2 vols. 8vo)

* Vide Note 7, on this Title, for some account of M. Burke's work

No.		No of times quoted in the Digest	No of fragments extracted from their works
6	Tiberius Coruncanius	2	"
7	Q Mutius	1	"
8	Sext Ælius Papius Catus	6	"
9	P Atilius	1	"
10	P Scipio Nasica	1	"
11	M Cato	5	"
12	P Mucius Scævola	4	"
13	M Manilius	3	"
14	M Brutus	7	"
15	C Lavius Drusus	1	"

II JURISCONSULTS OF THE LATTER PERIOD OF THE REPUBLIC.

16	Cicero	7	"
17	P Rutilius	5	"
18	Q Ælius Tubero	1	"
19	Q Mucius Scævola (<i>Pontiff</i>)	50	4
20	C Aquilius Gallus	16	"
21	S Sulpicius Rufus	93	"
22	Q Cornelius Maximus	2	"
23	Antistius Labeo, (<i>the father</i>)	1	"
24	Granius Flaccus	1	"
25	Ælius Gallus	2	1

III IN THE TIME OF J CÆSAR AND OF AUGUSTUS

26	A Offilius	73	"
27	A Cascellius	1	"
28	Trebatius Testa	96	"
29	Q Ælius Tubero, (<i>Pupil of Offilius</i>)	17	"
30	Cinna	3	"
31	Alfenus Varus	19	54
32	Aufidius Namusa	6	"
33	C Ateius Pacuvius	1	"
34	P Gellius	1	"
35	Antistius Labeo, (<i>the son</i>)	541	63
36	Ateius Capito	7	"
37	Bleasus	1	"
38	Vitellius	1	"

IV FROM TIBERIUS TO VESPASIAN.

39	Massurius Sabinus	220	"
40	Cocce Nerva, (<i>the father</i>)	34	"
41	C Cassius Longinus	160	"
42	Sempronius Proculus	136	37
43	Falcinius, (<i>Præscus</i>)	16	"

No.		No of times quoted in the Digest	No. of Fragments extracted from their works
44	Fabius Mela	39 "
45	Cautilius	2 "
46	Cocce Nerva, (<i>the son</i>)	15 "
47	Attilius	27 "

V FROM VESPASIAN TO HADRIAN.

48	Cælius Sabinus.	18 "
49	Pegasus.	28 "
50	Juvent Celsus, (<i>the father</i>)	5 "
51	Priscus Javolenus	11	.. .. 206
52	Aristo.	81 "
53	Neratius Priscus	129	.. .. 64
54	Arrianus	6 "
55	Plautius	4 "
56	Mintius Natalis.	3 "
57	Urseus Ferox	4 "
58	Varius Lucullus.	1 "
59	Fufidius.	3 "
60	Servilius	1 "

VI. HADRIAN AND ANTONINUS PIUS.

61	Lucius Celsus, (<i>the younger</i>).	173	.. .. 142
62	Salvius Julian	778	.. .. 457
63	Aburnius Valens.	4	.. .. 20
64	Lælius Felix.	2 "
65	Vindius Verus.	4 "
66	S. Cæcilius Africanus	3	.. .. 131
67	Volus Mæcianus	18	.. .. 44
68	Ulp Marcellus	256	.. .. 158
69	Val Severus	4 "
70	Ter Clemens.	1	.. .. 35
71	Publicus	3 "
72	Pactumeius Clemens.	1 "
73	Campanus.	2 "
74	Octavenus	23 "
75	Vivianus.	23 "
76	S. Pedius	60 "
77	Tuscius Fuscianus.	1 "

VII. MARCUS AURELIUS AND COMMODUS

78	Caius or Caius.	4	.. .. 536
79	S Pomponius.	409	.. .. 588
80	Q Cervidius Sævola	63	.. .. 307
81	J Mauricianus	6	.. .. 4
82	Papyrius Justus . . . . .	"	.. .. 16

No		No of times quoted in the Digest	No of Fragments extracted from their works.
83	Papirius Fronto.....	4	"
84	Claudius Saturninus.	"	1
85	Tarentenus Paternus	1	2

VIII FROM SEVERUS TO THE GORDIANS

86	Callistratus	"	101
87	Æm Papinian	153	596
88	Arrius Menander	5	6
89	Tertullian	3	8
90	Jul Paulus	45	2097
91	Domi. Ulpianus	20	2461
92	Venul Saturninus.. . . .	4	71
93	Messius...	1	"
94	Ælius Marcianus	6	282
95	Cl Triphonius	21	79
96	Lic Rufinus	1	17
97	Æm Macer	"	62
98	Heren Modestinus	2	345
99	Florentinus	"	42

IX FROM THE GORDIANS TO JUSTINIAN

100	Hermogenianus	"	107
101	Aurelius Arcadius Charisius	"	6
102	Julius or Gallus Aquila	"	2

X. UNCERTAIN

103	Puteolanus	1	"
104	Paconius	1	"
105	Furius Antianus	"	3
106	Rutlius Maximus	"	1
107	Antæus	1	"

TABLE II

LIST of the Roman Emperors, with the dates of their accession to the throne, and the number of their Laws preserved in the Code of Justinian

No	Date of Accession	Names	Laws
1	.....	Julius Cæsar.	"
2	.....	Augustus.....	"
3	19th August, 14	Tiberius	"
4	16th March, 37	Caligula	"
5	26th January, 41	Claudius	"
6	13th October, 54	Nero.. . . .	"

No	Date of Accession	Names	Years
7	11th June . . . 68	Galba	"
8	16th January, . . 69	Otho	"
9	15th April, . . . 69	Vitellius	"
10	20th December, . . 69	Vespasian	"
11	24th June, 79	Titus	"
12	13th September, . 81	Domitian	"
13	18th September, . . 96	Nerva	"
14	27th January, . . . 98	Trajan	"
15	11th August, . . . 117	Hadrian	1
16	10th July, 138	Antoninus Pius	9
17	7th March, 161	Marcus Aurelius and Lucius Verus	4
18	— January, 170	M. Aurelius alone	5
19	.. . . . . 176	M. Aurelius and Commodus	"
20	17th March, 180	Commodus alone	"
21	1st January, . . . 193	Pertinax	2
22	28th March, . . . 193	Didius Julianus	"
23	2d June, 193	Severus	42
24	.. . . . . 198	Severus and Caracalla	141
25	.. . . . . 208	Sev. Carac. and Geta	"
26	4th February, . . 211	Caracalla and Geta	"
27	27th February, . . 212	Caracalla alone	250
28	8th April, 217	Macrinus	"
29	7th June, 218	Elagabalus	5
30	11th March, 222	Alexander Severus	415
31	19th March, 235	Maximinus	4
32	27th May, 237	Gordians, (elder and younger)	"
33	9th July, 237	Maximus and Balbinus	"
34	15th July, 238	Gordian III	272
35	10th March, 244	Philip	73
36	.. . . . . 247	Philip (father and son)	53
37	— October, 249	Decius	9
38	— December, . . . 251	Gallus and Hostilian	"
39	— July, 252	Gai and Volusianus	1
40	1st May, 253	Emilianus	"
41	— August, 253	Valerian and Gallian	60
42	.. . . . . 255	Val. Gall. and Valerian II	27
43	.. . . . . 260	Gallian alone	"
44	.. . . . . —	Gallian and Valerian II	5
45	20th March, 268	Claudius II	2
46	— May, 270	Aurelian	4
—	— January, 275	Interregnum	"
47	25th September, . . 275	Tacitus	"
48	12th April, 276	Probus	4
49	— August, 282	Carus	"
50	.. . . . . 283	Carus, Carinus and Numerian	19

No	Date of Accession	Names	Years
51	25th December, . 283	Carinus and Numerian	7
52	17th September, . 284	Diocletian	21
53	1st April, 286	Diocletian and Herc Maximian	1220
54	1st May, 305	Const Chlorus Galerius, Severus, and Maxim	6
55	— July, 306	Galerius, Severus, Maximinus and Constantine	
56	. . . . . 307	Galerius, Maxentius, Maximian, Constantine, Lacinius, and Maximinus	"
57	. . . . . 309	Gal Maxent Const Lacin and Maximinus	"
58	— May, 311	Maxentius, Constantine, Lacinius, and Maximinus	"
59	29th October, . . 312	Constantine, Lacinius, and Maximinus	"
60	— August, 313	Constantine and Lacinius	1
61	— September, . . 321	Constantine the Great	201
62	22d May, 337	Constantine the younger, Constantius, & Constans	9
63	— March, 340	Constantius and Constans	33
64	27th February, . . 350	Constantius alone	22
65	5th March, 351	Constantius and Gallus	"
66	— January, 355	Constantius alone	"
67	6th November, . . 355	Constantius and Julian	16
68	3d November, . . 361	Julian	19
69	27th June, 363	Jovian	3
70	— February 364	Valentinian I	2
71	— March, 364	Valentinian I and Valens	91
72	24th August, . . . 367	Valentinian I Valens and Gratian	62
73	17th November, . . 375	Valens, Gratian, and Valentinian II	13
74	9th August, 378	Gratian and Valentinian II	9
75	3d January, 379	Grat Valent II and Theodosius	91
76	— January, 383	Grat Valent II Theodos and Arcadius	18
77	— August, 383	Valent II Theodos and Arcadius	121
78	15th May, 392	Theodosius and Arcadius	11
79	— January, 393	Theodos Arcadius, and Honorius	30

EMPIRE OF THE EAST AND EMPIRE OF THE WEST

80	17th January, . . . 395	Arcadius and Honorius	112
81	11th January, . . . 402	Arcad Honor and Theodosius the younger	12
82	. . . . . 408	Honorius and Theodosius the younger	113
83	8th February, . . . 421	Honorius, Theodos and Constantius II	1
84	2d September, . . . 421	Honorius and Theodosius the younger	25
85	15th August, 423	Theodosius the younger alone	9
86	— October, 424	Theodosius the younger and Valentinian III	181
87	29th July, 450	Valentinian III alone	"
88	25th August, 453	Valentinian III and Marcian	21
89	— March, 455	Marcian alone	5
90	. . . . . 455	Marcian and Avitus	"
91	. . . . . 456	Marcian alone	5
92	— February, 457	Leo I	13

No	Date of Accession	Names	Laws
93	1st April, ... 437	Leo I and Majorian "
94	1st August, . . . 461	Leo I alone "
95	.. .. . 461	Leo I and Lybrius Severus "
96	.. . . . 464	Leo I alone "
97	.. . . . 467	Leo I and Arthemius . . . . .	.. 38
98	.. . . . 472	Leo and Olybrius "
99	— October, ... 472	Leo I alone "
100	— January, . . . 474	Leo the younger and Zeno . . . . .	.. 10
101	— June, 474	Leo, Zeno, and Julius Nepos "
102	— November, 474	Zeno and Julius Nepos "
103	.. . . . 476	Zeno alone . . . . .	.. 64
104	. . . . . 480	Zeno and Romulus Augustulus "

END OF THE EMPIRE OF THE WEST.

105	. . . . . 480	Zeno alone "
106	11th April, . . 491	Anastasius . . . . .	.. 54
107	10th July, . . . 518	Justin . . . . .	.. 10
108	1st April, . . . 527	Justin and Justinian . . . . .	.. 2
109	1st August, 527	Justinian alone . . . . .	.. 403

TABLE III

DATES connected with the Publication of the *Corpus Juris Civilis* of Justinian.

Anno 529	(<i>Justinian Consul, 2d time</i>)	13th February, orders given for the formation of the Code
529	(<i>Decius Consul</i>)	7th April, the Code published
530	(<i>Lampadius and Orestes Consuls</i>)	50 novel decisions published 15th December, directions issued for the composition of the Digest.
533.	(<i>Justinian Consul, 3d time</i>)	The Institutes published 22d November, the Digest 16th December. The latter, however, were probably finished the preceding year
534	(<i>Justinian and Paulinus Consuls</i>)	Codex repetitæ prælectionis, published 17th November

TABLE IV.

NUMBER of Titles and Laws contained in each Book of the Code

Books	Titles	Laws	Books	Titles	Laws
1st	57	363	8th	59	453
2d	59	347	9th	51	337
3d	44	310	10th	76	318
4th	66	568	11th	77	264
5th	75	466	12th	64	303
6th	62	485		765	4652
7th	75	438			

TABLE V
NUMBER of Fragments (or Laws) contained in each Book of the Digest.

Books	Titles	Fragments	Books	Titles	Fragments
1	22	231	27	10	118
2	15	205	28	8	266
3	6	182	29	7	235
4	9	249	30	1	128
5	6	187	31	1	89
6	3	100	32	1	103
7	9	177	33	10	206
8	6	163	34	9	192
9	1	112	35	3	218
10	4	121	36	1	145
11	8	108	37	15	172
12	7	192	38	17	202
13	7	132	39	6	192
14	6	77	40	16	330
15	4	87	41	10	217
16	3	90	42	8	172
17	2	146	43	33	154
18	7	173	44	7	154
19	5	117	45	3	200
20	6	100	46	8	307
21	3	141	47	23	245
22	6	130	48	24	347
23	5	221	49	18	177
24	3	145	50	17	622
25	7	67		132	9123
26	10	210			

TABLE VI

ORDO titulorum in *Codice*, quod ad jus privatum attinet, idem est ac edicti perpetui, et religiosius quidem quam in *Digestis* observatus
Congruunt singuli libri cum *Digestorum* Singulis partibus.
[Warnk tom 1. p. 45.]

Lib I et II <i>Codicis</i>	PARII Dig	I
Lib III	Dig	II
Lib IV	Dig	III
Lib V	Dig	IV


Exceptis libris XX—XXII Dig insertis

Lib VI	Dig	V
Lib VII	Dig	VI
Lib VIII præter jus pignoris IX—XII	Dig	VII

✂ Forma *Codicis* hæc est, ut Constat XII libris in 761 ad 804 tit distinctis
Constitutionum numerus a 4,554 ad 4,649 Plurimæ editiones restituta habent loca fere trecenta *

* Berriat St Prov, p 360, numerat 765 titulos, et 4,552 constitutiones

TABLE VII.

[ Students in the commencement of their studies in the Civil Law often meet with abbreviations, the full import of which may be doubtful, or unknown. That we may relieve them from this difficulty, *in limine*, we have prepared the following table of abbreviations. The system of abbreviations was carried to a great extent, not only by the Romans, but by the monks of the middle ages, in transcribing classic and other authors. These abbreviations, as far as the Civil Law is concerned, relate chiefly to numbers, names, titles of office, and formulas.]

ABBREVIATIONS

A U C or A B .	<i>Ab urbe condita</i>
A M	<i>Artium magister Anno mundi</i>
A C	<i>Anno corrente Ante christum</i>
A	<i>Aulus Absolvere, Antiquo</i> [Vide UR]
AUTH	<i>Authentica</i> , such of the Novels as were authentically translated into Latin from the Greek
ÆD	<i>Ædilia</i>
B A	<i>Baccalaureus artium</i>
B F	<i>Bonum factum</i> , approval endorsed on the Decrees
B L	<i>Baccalaureus legum</i>
C	<i>Centum</i> 100 <i>Causa</i> or <i>Gaus</i> Code
CI C or CX D . .	1000
DD	5000
CCCIDD	100,000, or,
C ML	<i>Centum milia</i>
COS	<i>Consul</i>
COSS or CC . . .	<i>Consules Consulibus</i>
C. R	<i>Civis Romanus</i>
Coll	<i>In the Collation of a certain Novel</i>
Cn or Gn	<i>Gnæus</i>
Cal or Kal	<i>Calenda</i>
C S	<i>Custos Signi</i>
C J C	<i>Corpus Juris Civilis</i>
D	<i>Decimus Divus Digest</i>
D O	<i>Deus optimus—vel deo optimo</i>
DDDD	<i>Dignum Deo donum dedit</i>
Dos	<i>Designatus</i>
Dn	<i>Dominus</i>
D. D	<i>Dono Dedit</i>
D M	<i>Deus Manius</i>
E or Eod	<i>Under the same head, or title</i>
Eq Rom	<i>Eques Romanus</i>
F	<i>Filius, Fimus, Finalis, the last or latter</i>
ff	<i>Pandects</i> or Digests, designated by the Greeks by their letter π which the Romans corrupted into a double f
G	<i>Gaus Gellius Glossa</i>

GL	<i>Glossa</i>
H .. .	<i>Hic—here, in this title, law, or paragraph</i>
H TIT	<i>Hoc titulo</i>
I or INF.	<i>Infra</i>
Imp	<i>Imperator</i>
Ictus	<i>Jureconsultus</i>
INF	<i>In fine, at the end of the law, &c</i>
IN PR	<i>In principio, in the commencement of the law, &c.</i>
INF PR. ...	<i>In fine principii, towards the close of the commencement of a law, &c</i>
In Sum.	<i>In summa</i>
J GLO	<i>Juncta Glossa, the gloss and the quoted text joined</i>
J U D	<i>Juris ultriusque doctor</i>
L	<i>Lucius, Lege, in such a law Liber</i>
M.	<i>Marcus, Martius, Manlius, Mutius</i>
Non	<i>Nonæ</i>
NOV	<i>Novella</i>
OM	<i>Optimus Maximus</i>
P	<i>Publius Pondo</i>
P C	<i>Patres Conscripti</i>
P P	<i>Propositum publice</i>
P R	<i>Populus Romanus</i>
P R. S	<i>Prætoris Sententia</i>
II.	<i>Pandectus</i>
Q	<i>Quantus Quantulus, &c</i>
Qu or QUÆS . . .	<i>Quæstio—or questione</i>
R	<i>Roma</i>
RU. or RUB	<i>In a certain rubric or title, so called from the red letters formerly used</i>
R C	<i>Romana Civitas</i>
R P	<i>Respublica Romani principes</i>
SOL	<i>Solutio</i>
S	<i>Sextus.</i>
S C	<i>Senatus Consultum</i>
S P Q R	<i>Senatus populusque Romanus</i>
T	<i>Titulus Titus, Titius, Tullius, &c</i>
ULT	<i>Ultimo, the last law, title, &c</i>
U R	<i>Uti rogas—affirmative, in opposition to antiquo—(quod vide) negative</i>
V R	<i>Same as U R—quod vide</i>
V C	<i>Vir Consularis</i>
V G	<i>Verbi gratia</i>
X or Xn	<i>Christ, Christian</i>

(Note 16) DE VERBORUM SIGNIFICATIONE, ET DE REGULIS JURIS.—Definite language, and fixed rules constitute the essentials of every science. All that remains can be little else than amplification, in the form of illustrative examples, authoritative opinions, arguments from analogy, &c. these however, only serve to confirm the accuracy of the signification affixed to the words, and the propriety of the rules deduced from the entire science. Hence, if the natural order be observed, the vocabulary and digest of principles, as they do not create, but are to be extracted, from the science, would seem to follow, not to precede its consideration. The general import, indeed, of the entire nomenclature, as also the nature of the rules must of course, either be understood, previously, or be imparted, whilst treating the science. What is now intended, therefore, is merely that the *perfectly defined words*, and the *established rules* of any science should terminate its consideration. Under this view it was that in the Digest, the concluding books treat of the exact signification of the Words, and of the precise import of the Rules of Law. The vast importance at all times attached by civilians to these two titles, is strongly manifested, by the fact that, scarcely any of the other titles of the Justinian Law have been so frequently the subject of careful arrangement, and of learned commentary, as the two just mentioned; and that even distinct professorships have been founded for the teaching of these titles. Chancellor d'Aguesseau was so strongly impressed with this opinion that, whilst M. Pothier was engaged in the work, he manifested great solicitude as to these concluding titles. M. Le Trosne, in his Eulogy on M. Pothier remarks that, ‘The two concluding titles of the Digest are, De Verborum Significatione, and De Regulis Juris. Pothier rendered these titles very important and extensive. In that De Regulis

Juris, he has comprised an abridgment of the whole law, collecting from all the books of the Digest, and arranging in excellent order those principles which are so fertile in their consequences, and which the Roman jurists expressed with such distinguished precision.

‘It appears that it was Chancellor d’Aguesseau who first conceived the idea of this part of M. Pothier’s work, and recommended it at the beginning of the undertaking. After having completed these two titles, Pothier designed to publish them as a separate work, but yielded to the solicitation of the Chancellor, who pointed out to him the advantage that would result from terminating the work by this collection, which presents a valuable abstract of it, formed from the titles themselves.’*

(*Note 17.*) **HALLIFAX’S ANALYSIS.**—This is a methodical outline of the Roman Law, and presents a condensed syllabus of a course of lectures delivered by Dr. Hallifax in the University of Cambridge. It was published in 1774, in an octavo volume of 150 pages, and has gone through several editions. To the elementary student it is particularly valuable, and to those who have made some progress in the science it may serve occasionally to refresh their memory

(*Note 18.*) **WILDE’S LECTURE ON THE CIVIL LAW.**—This is a prelection to a course of lectures on the Institutes of Justinian, published in 1794, by John Wilde, Esq. Professor of Civil Law in the University of Edinburgh. A similar discourse on the Pandects was delivered by him about the same time in Latin, it being intended that the entire course on the Pandects should be in that language. To what extent these schemes were prosecuted, we have not been able to learn

* Vide 1 vol Evans’ Pothier on Oblig 10 Pothier’s Prefa in Pand lvi

Professor Wilde appears to have been actuated by no ordinary share of zeal in his undertaking; and was, no doubt, well qualified in the learning of the Civil Law; but his eccentricity seems also to have been so uncontrollable, that we apprehend his lectures, if delivered, were not very practical or useful.

The Civil Law has at all times been cultivated in Scotland, and has been written on, and publicly taught; still, not to the full extent that is naturally looked for in a country so long distinguished for learning, and where this system of law lies at the foundation of its jurisprudence, from the earliest times to the present day. The three professorships of the Civil Law in Scotland, viz: of Edinburgh, Aberdeen, and Glasgow, have been maintained with respectability, and with only occasional interruptions. That of Glasgow, particularly, has been long distinguished, especially under Professor Millar; and, as Dr. Arthur Brown remarks—‘has attracted many of the youth of Ireland and England within the sphere of its instruction.’* The professorship at Aberdeen has not been equally fortunate. Dr. James Brown, in some recent very able remarks on the state of the Civil Law in Scotland compared with that of England, in which he has shown himself an able advocate of the former, observes that although till lately, no lectures on Civil Law have, for many years, been delivered in the University of Aberdeen, yet now ‘Scotland, with only *two* million of inhabitants, has *three* professorships of the Roman Law, all of which are efficient; while England, with *fourteen* million of inhabitants, has only *two* such professorships, one of which is *inefficient*, and the other an *absolute sinecure*.’†

* 1 Brown's Civil Law, 14.

† Vide Brown's Remarks on the Study of the Civil Law, occasioned by Mr. Brougham's late Attack on the Scottish Bar. Edinburgh, 1828, page 33—35.

Mr Wilde's lecture is preceded by an Introductory Discourse of a hundred pages, treating *de omnibus*, except the Civil Law, and is an eccentric political rhapsody, wholly unworthy of being read, but which, in connection with the lecture, shows that the learned author, though a wild politician, might still be an able civilian

(Note 19) DR. IRVING'S OBSERVATIONS ON THE STUDY OF THE CIVIL LAW) This able, eloquent, and earnest appeal on the utilities of the Civil Law, and the necessity of promoting its cultivation in Britain, by means of public lectures, seems to have produced a salutary effect, not only in Scotland, but even in England, where the remains of the jealousy of this foreign code still lingers. Dr. Irving's little volume has been much read; and the Roman Law, now decidedly on the advance in both countries, has been recently more advantageously noticed, and more frequently urged on the public attention than it had been, perhaps, for centuries preceding. The essays of Dr James Brown, of Dr Reddie, and those in the London Law Magazine, and in the various Reviews—as also the recent works of Burke, of Spence, and others, may have arisen, in part at least, from the strong, attractive, and powerful reasonings of Dr. Irving, on the necessity of reviving, or rather of further promoting the study of the Civil Law. Whether this be the case or not, the professorship at Aberdeen (which was revived a few years after Dr Irving's essay) and that at Edinburgh, seem now to be more prosperous than for many years preceding; and the works of the civilians of the continent are making their way into England, more rapidly at this time than has ever before been the case. Such essays as those of Dr. Irving and of Dr. Reddie, which, in a small compass, afford much information, and urgent reasonings and solicitations on the utility of this system of jurisprudence, often pro-

duce a more extensive and solid effect, than more elaborate treatises, which are usually read by those only who need no such incitements

(*Note 20*) NOTITIA VARIORUM AUCTORUM, &c OF M POTHIER. In the fifth volume of M. Pothier's Pandectæ, the first twenty-one pages are devoted to a brief account of various authors in the Civil Law, and of their works, to which he has resorted in his numerous annotations on the Digest. To the student this will be found an useful auxiliary

(*Note 21.*) BUTLER'S MEMOIR OF THE LIFE OF CHANCELLOR D'AGUESSEAU. This is a highly instructive and charming piece of legal biography, prepared by Mr Butler, in his best manner, and relates to one of the most enlightened of modern jurisconsults. Chancellor d'Aguesseau was a bright exemplar of vast and exact learning—of methodical industry, of official integrity, and of the most bland and captivating manners. His beautiful morals and eminent piety, also added much to the lustre of his character. He was, moreover, remarkable for eloquence, and for the style of his judicial oratory, which was of the highest class. His works, in thirteen large quarto volumes, evince surprising accuracy of knowledge, great industry, and the most faithful discharge of every official duty. We refer the student for some account of the studious habits of this great man, to our Note 1, Division I. of 'Auxiliary Subjects'

published in June, 1812; and the masterly review of these pamphlets in the fourth volume of the *American Review*, p. 1 to 70.

(*Note 8.*)

NOTES ON THE ELEVENTH TITLE

(*Note 1*) **STORY'S CONSTITUTIONAL CLASS BOOK**—If our student has strictly followed the course we have prescribed in this volume, he will now enter upon an extensive and important branch of his study, with no further previous acquaintance than what he may have gained from a careful study of Rawle on the Constitution, which was recommended among the early volumes of his Course, for the reasons assigned in our note on that work,—vide ante Note 19, p 168 As his legal pursuits, however, have since been both various and extensive, and the outlines of the subject now to be undertaken, may, in a degree, have faded from his memory, we strongly recommend this small volume of Mr. Justice Story, as it is from the pen of a master; is admirably adapted to revive his recollections, and to furnish him with a *coup d'œil*, the beauty and value of which, his subsequent more elaborate studies will enable him fully to appreciate.

The constitutional law of the United States illustrates, we think, in the clearest manner, the co-existence of two facts, which, though perfectly in unison with each other, are at first, seemingly, at variance—viz: first, a constitutional code, consisting of but a few pages, which regulates many of the most important interests of twenty-four sovereign states, and of a great nation educed out of them all; and secondly, the exercise of interpretative powers, swelling into volumes, and yet in no

instance departing from the clear letter, or manifest spirit of the instrument, and never falling into the vice of judicial legislation. Our Constitution seems to be a happy exemplar of the practicableness and utility of philosophical codification, which ought never to have been understood by any one, as aiming at the exclusion of judicial interpretation, or the just application of the concisely expressed law to numerous facts, and to their infinite combinations and modifications. If a code, of small extent, can be so formed as to embrace within its terms, or obvious spirit, every circumstance that shall arise during the lapse of ages, its authors have proved themselves wise legislators, have conferred on their country a great and lasting benefit; and established in the science of legislation, a truth of the highest importance and this, we conceive, has been eminently accomplished in the Constitution of these United States

(Note 2.) WILSON'S LECTURES ON LAW.—The works of the Hon. James Wilson, late associate justice of the Supreme Court of the United States, and professor of law in the college of Philadelphia, were published in the year 1804, by Bird Wilson, esq. in three volumes, 8vo. The Lectures on Law, delivered by Dr Wilson, occupy three-fourths of the work. We entertain great respect for the character and learning of this gentleman; and should be happy, as it is the product of our soil, could we recommend the work generally to the American student of law. The duty which we have taken on ourselves imposes the utmost regard for the student's time, and as such elementary works as the '*Commentaries*,' and '*Systematical View of the Laws of England*,' are without doubt to be studiously read by him, we conceive that they have superseded, (at least for the use of law students,) such works as contain general and indefinite legal information,

combined with, and embellished by the ornaments of literature; which though young gentlemen, in the course of their *collegiate* inquiries, would find highly interesting and useful, would prove by no means satisfactory to the regular student of law. There are some of these lectures, however, well entitled to our student's regard, as they treat on topics not to be found in Blackstone or Wooddeson. To those who read on legal subjects as a part of general education, these lectures are entitled to a preference over those of Mr Wooddeson, provided the 'Commentaries' be likewise read

(Note 3) FEDERALIST AND LETTERS OF PACIFICUS.—It is seldom that the speculations of philosophers have been so remarkably verified as those of the writers of the Federalist. It is a fact very honourable to the authors of this work, that their opinions of the federal system, founded on *à priori* reasoning, form an accurate history of the practical operation of a scheme at that time but just organized, an instance somewhat uncommon of the correctness of philosophical prophecy. For a very sensible and interesting review of this excellent and popular commentary on the Constitution of the United States, we refer the student to the second number of vol. 1st, and first number of volume 2nd, of the American Review, an article which contains a large portion of the learning and genius of the writer of that work, a writer to whom the American public are largely indebted for many eloquent and ingenious productions on the politics of the country.

The Federalist on the new Constitution was written in the year 1788, by Alexander Hamilton, James Madison, and John Jay. The recent edition of this work, published at Washington in 1831, is greatly superior to any preceding edition. It contains, in an Appendix, the Articles of Confederation, the

Constitution of the United States, and the Amendments to the same, and the Letter of General Washington, as President of the Convention, to the President of Congress. It is also improved by a table of contents, a copious alphabetical index, and a designation of the numbers written by Mr. Madison, corrected by himself.

(Note 4.) STORY'S COMMENTARIES ON THE CONSTITUTION.—These volumes will always be regarded as an authoritative source of constitutional law. We have selected such portions as we believe are best adapted to the wants of a student, not doubting that the whole of the residue will be carefully studied in the course of his subsequent professional reading.

(Note 5.) DU PONCEAU ON THE JURISDICTION OF THE UNITED STATES COURTS.—The learned author of this Dissertation is well known as a scholar, and a philosopher, who thinks deeply and accurately. The volume has been extensively read, and will continue so to be. The questions discussed are of the highest constitutional importance, and we regret that what is a valuable dissertation, has not been since extended by its able author, into a volume, co-extensive with the subject, and in all respects the worthy representative of his talents and learning. It is, however, all that he professed to give; and has justly commanded the admiration of all who have read it.

(Note 6.) SERGEANT'S CONSTITUTIONAL LAW.—This is a didactic and regular treatise on the theory, and the practical operation of the Constitution of the United States. The subjects are well arranged, and embrace all that the Constitution and laws made under it, point out, and all that the courts have decided in respect to both. It is a volume addressed rather to lawyers, than to statesmen; for it is expository throughout, and

aims at no speculative discussions of doubtful questions In this respect it is highly valuable to the practising lawyer, and is, indeed, the only systematic law treatise on the subject The second edition appeared in 1830

(Note 7) CRANCH'S REPORTS IN THE SUPREME COURT OF THE UNITED STATES —We refer the student to Note 7, ante page 421, &c. for remarks on the Reports of Cranch, Wheaton, and Peters, of decisions in the Supreme Court of the United States, from 1801 to 1835

(Note 8) ADDRESS OF THE MINORITY, &c —We have had occasion to remark more than once, that pamphlets, essays, dissertations, and, in fine, the ephemeral productions of some exigency, often contain the substance of more extensive and elaborate works, and deserve to outlive the momentary cause of their being.*

These two pamphlets cannot, and ought not to be forgotten they are documents of great interest and importance. We had some hesitation, however, in recommending them, because *political*; but where is the distinct boundary between *constitutional* and *party* dissertation?

* Vide ante Note 30, page 286 post notes 8, 9, on Title XIII

PARTICULAR SYLLABUS.

TITLE XII.

‘Whilst almost every European nation remains plunged in ignorance respecting the constitutive principles of society, and only regards the people who compose it as cattle upon a farm, managed for the particular and exclusive benefit of the owner, we become at once astonished and instructed by the circumstance that the thirteen republics have, in the same moment, discovered the real dignity of man, and proceeded to draw from the sources of the most enlightened philosophy, those humane principles on which they mean to build their forms of government’—*Abbe De Mably*

THE CONSTITUTION AND LAWS OF THE SEVERAL STATES IN THE UNION

(*Note 1.*)

1. Smith’s Comparative View of the Constitutions of the several states with each other, and with that of the United States, exhibiting in Tables the prominent features of each Constitution, and classing together their most important provisions under the several heads of Administration; with notes and observations. [*Second edition*, 1832]

2. Griffith’s Law Register. (*Note 2*) (*Note 3*)

3. The American Jurist—Title ‘Legislation.’
(*Note 4*)

NOTES ON THE TWELFTH TITLE

(*Note 1*) The student will readily admit the absolute necessity of an extensive and accurate knowledge of the statutory code of the particular state, in which he contemplates to practise his profession. The various legislative enactments, by which the Common and Statute Laws of the mother country have been either confirmed, repealed, altered, or modified, should receive his diligent attention.

Whether, and to what extent, the Common Law of England is the *lex non scripta* of the United States, in their *federal* capacity, and how far this common law, and the English statutes, are obligatory in the *several states* composing the union, are points on which the student will of course duly inform himself. Next, in orderly succession, should follow a minute knowledge of the Constitution and laws of the federal government, the Constitution and laws of the state in which the student is to reside, and finally, such of the laws of the sister states as are not merely of local, but of general interest throughout the union, such, for example, as those regulating the execution and authentication of deeds, powers of attorney, and other legal instruments, the provisions respecting inland bills of exchange, the laws relative to the attachment of the property of non-resident debtors, those respecting insolvents, and finally, all such state laws, as are likely to affect the interests of the citizens generally.

For the attainment of this essential branch of his studies, we beg leave to submit to the student the following rules

1. If there be a *Digest* of the laws of the state in which he is to reside, it should be attentively studied, in preference to the statute book at large; and in so doing, the *Digest* being

interleaved, the student should note down the material points in which these positive and written enactments deviate from the Common Law, or the statutes of England. He should, in his annotations, regard the important judicial constructions which have been made on these statutes, and likewise note down such new laws and amendments, as have been enacted since the publication of the Digest.

If no such Digest has been published, we earnestly recommend to the student, as the *easiest* and most *certain* mode of acquiring definite and durable knowledge on the subject, to abridge analytically all the state laws *then in force, of an important and general nature*, to arrange them alphabetically under titles, and to annotate in the manner just prescribed.

Let not the student shrink from such a task. We are convinced that, in the end, it is a great economy of time, by no means an arduous undertaking, and will more strikingly compensate the student, than perhaps any other part of his professional knowledge.

2 After the student has accomplished this highly improving task, he should direct his attention to such of the laws of the *sister states* as we have above described. This knowledge need not be very minute or definite; it will *generally* be sufficient to know precisely whither to *refer* for it; and to this extent it may easily be attained by a cursory review of the *indexes* of the most recent and valuable editions of the State Laws, and with a particular eye to the subjects most likely to be of *practical* use to him. The books of American Reports might occasionally be examined, with a view to important constructions of the statutes particularly interesting to the student.*

* Much of this species of information is to be found in Hall's American Law Journal, a work of merit, and great utility, also in the American Jurist, the United States Law Intelligencer, and in the South Carolina Repository.

A short time devoted to this twelfth division of our subject, would accomplish our student in one of the most important, yet neglected branches of his legal education

3 In several states we have observed, that lawyers, otherwise profoundly learned in their profession, have exceedingly disregarded the laws of the general and state governments, and have contented themselves with the gradual acquisition of this knowledge, as necessity urged them in the course of their practice. Nothing can be more objectionable than this mode of study, but particularly as regards state laws, which are usually exceptions to the general law, which general law is the common, and in part, the statute law of England. This method of acquiring the requisite information, is uncertain, hasty, and vexatious. It not unfrequently occurs, both in *court* and *office* practice, that opinions on the statute law are required to be given *instantly*, in which case, if the repeals and modifications introduced in the general system by our own statutes, be unknown, that which is familiar, viz. the law of the mother country, is with confidence advanced and acted upon, as the rule or law of the case, without a suspicion of the change, or of the serious consequences which may result from such ignorance. We have known these difficulties to occur to intelligent, and, in other respects, well read lawyers. The laws, therefore, of the United States, and of the state in which he practises, must be familiar to the lawyer, and it is to be hoped, that the inconveniences attending the casual and desultory mode of gaining this knowledge adopted by some, together with the injury which must result to the client from this neglect of *unlearning*, (if the word be allowed,) the general law, or being duly informed of its modifications, will satisfy the student of the necessity of allotting to this title a distinct and methodical attention.

4. In most of the states, not only the common, but the statute law of England, is in part obligatory. It therefore becomes important to ascertain, to what extent the statutes of England are in force in a particular state. In the states of New York, Virginia, and Maryland, this investigation has been made under the sanction of legislative authority. In the year 1808, the legislature of Pennsylvania appointed the judges of the supreme court of that commonwealth, to ascertain the English statutes which are in force in that state, and also those which, in their opinion, ought to be incorporated into the statute law of said commonwealth. The report of the judges to the legislature is to be found in the 3d volume of Binney's Reports, page 595, and in 2d Hall's Law Journal, page 51. Mr. Binney, in his note on this report, remarks, 'This important document is here inserted at the request of the judges of the supreme court. In many respects it deserves to be placed by the side of judicial decisions, being the result of very great research and deliberation by the judges, and of their united opinion. It may not, perhaps, be considered as authoritative as judicial precedent; but it approaches so nearly to it, that a safer guide in practice, or a more respectable, not to say decisive authority in argument, cannot be wanted by the profession.' A similar task was imposed by the legislature of Maryland on the late Chancellor Kilty. The work is executed with ability, and would be useful in every state of the union.

(Note 2) GRIFFITH'S LAW REGISTER.—The original design of this work was an eminently useful one, and, in part, has been faithfully executed. The second and third volumes only have appeared, and they consist of a series of questions propounded to eminent lawyers, in every state of the union, and answered by them respectively, in regard to the constitu-

tion, organization of the government, laws, judicial decisions, legal literature, &c of each state. These volumes are replete with that kind of useful information which would have been in a great degree unattainable, or, at least, with great difficulty, expense, and research, had it not been for the plan adopted, and the meritorious labours of the author and compiler.

The first and second volumes were to have embraced all that respects the Constitution and Laws of the United States. Inadequate patronage delayed, and we lament to add, death terminated the work in its present form. We advise all students and young practitioners to have these volumes constantly before them, for occasional reference.

(Note 3) OF THE SOURCES OF LOCAL, OR OF STATE LAWS; AND THE MEANS OF ACQUIRING A KNOWLEDGE OF THEM.—As the American States are confederated only for the objects defined, or implied, under the Constitution of the United States, and as the states, individually, are in all other respects sovereign and independent, a homogeneous system of American law can scarce be expected, or if it eventually takes place, it will be at a remote date, or under a form of general government essentially different from that which now exists.

The American lawyer, however, cannot rest satisfied with a knowledge of the jurisprudence of his own state, and of that of the General Government, some acquaintance with the laws of each state is essential. This knowledge will have been acquired, in a good degree, from Dr. Tacker's edition of Blackstone's Commentaries, from Chancellor Kent's Commentaries, from the pages of the American Jurist, especially under its titles 'Legislation' and 'Digests,' from occasional reference to State Judicial Reports, and lastly, from frequently consulting the late Mr. Griffith's Law Register. Most of the

legal bibliography, also, of every state of the union, will be found in the course of our present volume. The American law treatises have been very generally noted therein, and their reports have been carefully enumerated

From these various sources, the student will soon become acquainted with the best editions of the laws of each state; and more particularly, with such of their enactments and judicial opinions as are either peculiar, or of special interest in the other states; as for example, the laws relative to foreign attachment; the execution of deeds, damages on bills of exchange, the release of insolvent debtors; the authority of *res adjudicatæ*, and generally, of their law *de conflictu regum*, the operation of judgments as liens; the respect paid to letters testamentary, or of administration, in another state, and finally, the numerous other respects in which the law of one state may readily affect the rights of the citizens of any other state

(Note 4.) AMERICAN JURIST.—Our great respect for this work is manifested by numerous selections from its pages, which we have recommended as a part of the student's course under the head of 'MISCELLANEOUS,' annexed to most of our titles. The student will also find that we have more than once insisted on the claims of essays and dissertations, to the notice even of the learned, as they often contain, in a condensed form, the substance of much more elaborate treatises.*

* On this subject, vide ante Note 30 p 286 — 365, 366, and post Title XII Note 10

PARTICULAR SYLLABUS

TITLE XIII.

‘How greatly do they err, who suppose Political Economy a stranger to politics, legislation, and government, and judge it possible to have good laws with a bad system of political economy, or a good system of political economy together with bad laws’

Ganilh

‘Political Economy has only become a science since it has been confined to the results of inductive investigation’—*Say*

POLITICAL ECONOMY

1. Priestley’s Lectures on History and General Policy. (*Note 1.*)
2. Conversations on Political Economy by Mrs. Marcet, author of Conversations on Chemistry, &c. 1817.
3. Boileau’s Introduction to the study of Political Economy.
4. Joyce’s Analysis or Abridgment of Adam Smith’s Wealth of Nations. (*Note 2*)
- E. 5. Sir James Steuart’s Inquiry into the Principles of Political Economy. (*Note 3*)
- e. 6. Ganilh’s Inquiry into the various systems of Political Economy. (*Note 4*)
- E. 7. Lord Lauderdale’s Inquiry into the Nature and Origin of Public Wealth.
- E. 8. Arthur Young’s Political Arithmetic.
- e. 9. Malthus on the Principles of Population. (*Note 5*)

- e. 10. Say's Political Economy. *Biddle's edit. Philadelphia, 1832. (Note 6.)*
- e. 11. Pitkin's Statistical View of the Commerce of the United States. *(Note 7)*
- e. 12. Phillips' Manual of Political Economy.

MISCELLANEOUS.

- 1. Hamilton's Report on a National Bank. *Ham. works, vol. vi. 59.*
- 2. Hamilton on the Constitutionality of a National Bank. *Ibid. iii.*
- 3. Hamilton's Report on a Public Credit. *Ibid. i. (Note 8)*
- 4. Hamilton's Report on the establishment of a Mint. *Ibid. 275.*
- 5. Hamilton's Report on the subject of Manufactures. *Ibid. 157*
- e. 6. Bollman's Paragraphs on Banks. *Phila. 1810. (Note 9.)*
- E. e. 7. Bollman's Plan of an Improved System of the money concerns of the Union. *Philadelphia, 1816.*
- e. 8. Johnson's Inquiry into the nature and value of Capital, and into the operation of Government Loans, Banking Institutions, and Private Credit. *(Note 10)*
- E. e. 9. Carey's Letters to Dr. Adam Seybert, on Banks. 1810.
- E. e. 10. Carey's Essays on Banking, 1816.

WORKS OF REFERENCE ON POLITICAL ECONOMY

[**IP** The following works are designed mainly for the advanced practitioner, states man, judge, &c but students are recommended to look at the volumes, and ascertain their general contents]

American Almanac, 6 vols 1835

A Critical Dissertation on the nature, causes, and measures of value — Anonymous

Blodgett's Statistical Manual, 1806

Bergius—Cameralisten Bibliothek, 1765, [in German—being a complete Catalogue of all books, pamphlets, &c on political economy, finance, police, &c to his time]

Bases fondamentales de l'Economie Politique, d'après la nature des choses—par M Casaux, 1826

Breve Trattato delle cause che possono far abondare li regni d'oro et d'argento dove non sono Maniere, da Antonio Serra, 1613

Carey's (H C) Essay on the Rate of Wages Philadelphia, 183 ,

Colquhoun on the Wealth and Resources of the British Empire, 1814

Cardozo's Notes on Political Economy, 1826

Cooper's Elements of Political Economy, 1826

Considérations qui démontrent la nécessité de fonder des maisons de refuge, d'épreuves morales pour les condamnés libérés, suivies du tableau du régime de ces maisons, par French, 1829

Cours complet d'Economie Politique pratique, par J B Say, 6 vols 1829

Cours d'Economie Politique, ou Exposition des principes qui déterminent la prospérité des nations, par H Storch, avec notes explicatives et critiques, par J B Say, 1823, 4 vols 8vo

Chalmers on Political Economy, 1832

Darby's Historical, Geographical and Statistical View of the United States, 1828

Dictionnaire analytique d'Economie Politique, par M Ganiilh, 1826

De la Richesse commerciale, ou Principes d'Economie Politique appliqués à la législation commerciale, par Simonde de Sismondi Geneva, 1803, 2 vols 8vo

Des pauvres, des mendiants et de leur droit comme membres du corps politique, 1829

De la Félicité publique, ou Considérations sur le sort des hommes dans les différentes époques de l'histoire, par le Marquis de Chastelleux, 2 vols 1822.

Du Système d'Economie Politique, de la valeur comparative de leur doctrines et de celle qui parait la plus favorable au progrès de la richesse, 2e édition, avec de nombreuses additions relatives aux controverses récentes de M M Malthus, Buchanan, Ricardo, sur les points les plus importants de l'economie politique, par Ganiilh, 2 vols 1821

De Virri's Meditazione sull' Economia Politica, 1771

Economie Politique, ouvrage traduit de l'allemand de Schmalz, par Jouffroy, revu et annoté par Fritot, 2 vols 1826

Essai sur l'extinction de la mendicité en France, 1829

Essai politique sur le revenu des peuples de l'antiquité, du moyen âge et des siècles modernes, et spécialement de la France, par M Ganiilh, 2 vols 1823

Essai sur les principes de l'Economie Publique, par Browne Dignan Londres, 1776

Filosofia della Statistica, da Giosa Milano, 1826, 2 vols

- Forces productives et commerciales de la France, par Ch Dupin, 2 vols 1826
- Greenleaf's Statistics and Political Economy of the State of Maine *Portland*, 1829
- Histoire financière de la France, depuis l'origine de la monarchie jusqu'à l'année, 1828,
par J. Bresson, 1829, 2 vols
- Harris's Essay on Money and Coins, 1757
- Introduction à la science de l'Economie Politique et de la Statistique générale, par M
Leblanc, 1801
- L'Ami des hommes, ou Traité sur la population, par le Marquis de Mirabeau *Avignon*, 1760, 3 vols.
- Le Commerce au dix neuvième siècle, état actuel de ses transactions dans les principales contrées des deux hémisphères, causes et effets de son agrandissement et de sa décadence, et moyens d'accroître et de consolider la prospérité agricole, industrielle, coloniale et commerciale de la France, par A M de Jouvès, 1825, 2 vols 8vo
- La Physiocratie, 6 vols, 1768
- La théorie d'Economie Politique, par Ch Gailh, 3 vols 1815
- Malthus on Political Economy, 1820
- Mill's Elements of Political Economy
- Nouveaux principes d'Economie Politique, par M Simonde de Sismonde, 2 vols, 1826
- Principes d'Economie Publique et industrielle en forme d'entretien, par M Suzzane *Paris*, 1826
- Précis élémentaire d'Economie Politique, précédé d'une introduction historique, &c par M Blanqui, 1 vol 1826
- Pecher on the Taxation, Debt, &c of the British Empire
- Raymond on Political Economy, 2 vols *Baltimore*, 1823
- Seybert's Statistical Annals of the United States, 1818
- Say—Catéchisme d'Economie Politique, ou Instruction familière qui montre de quelle façon les richesses sont produites, distribuées, &c *Paris*, 1826
- Sadler's Law of Population, 1830, 2 vols
- Senior's Lectures on Population, 1831
- Scrittori classici Italiani di Economia Politica *Milano*, 1816, 50 vols 8vo
- Sartorius,—Von den Elementen des Nationalreichthums und von der Staatswirtschaft *Goettingen*, 1806
- Soden—Nationalökonomie, 9 vols. 1824
- Storch—Die natur des Nationaleinkommens, 1825
- Statistique élémentaire de la France, par Peuchet, 1805
- Statistique générale et particulière de la France, par une Société de gens de lettres, (par Peuchet, Sonini, Herbin et autres,) 7 vols 1803.
- Schnitzler's Statistique et Itinéraire de la Russie, 1829
- The Principles of Population, by George Purvis, 1818.
- Turgot, Recherches sur la Richesse et l'origine des Richesses nationales, 1774
- Thornton's Inquiry into the nature and effects of the paper credit of Great Britain
- Trattata della Moneta—by the Abbé Galiani, 1750
- Tooke's Thoughts and details on High and Low Prices
- Torrans' Essay on the Production of Wealth.
- Warden's Statistical, Political and Historical Account of the United States, 1819.
- Watterston and Van Zandt's Tabular Statistical Views of the United States, 1829.
- Whately's Lecture on Political Economy, 1831

NOTES ON THE THIRTEENTH TITLE.

(*Note 1.*) PRIESTLEY'S LECTURES, &c —It will be perceived, from the subjects and books recommended in this course, (with the exception of the first division under the head of 'Auxiliary subjects,') that but little notice has been taken of History, and many branches of general science. This arises from the particular nature and object of the present work, which is to unfold the purest sources of *legal* knowledge, and of such other subjects as are *immediately* connected with it. History is certainly of the first importance to the lawyer, but as every well informed man will allot a suitable portion of his time to that subject, and as it often constitutes a branch of academical or collegiate education, or is presumed to have been studied by young men before their engagement in professional studies, we have deemed it more consistent to omit a general course of historical reading. This, at first view, may appear to be a defect in a Course professing to be minute and entire on the subject of legal education. But where, it may be inquired, is the line of distinction? A lawyer is to be a man of general science — he is to know *something* of almost every topic, and *much* of the subject of jurisprudence and its auxiliary branches. As history is a topic which sheds light on science generally, and is studied no less by the divine, the physician, and man of letters, than by the statesman and lawyer, it does not demand a distinct and particular notice in this work, with the exception, however, of the history of our own country, and, (if it were practicable,) of such portions only of this, as illustrate the policy, constitution, laws, and political economy of the states and the federal government. Under the title 'Auxiliary subjects,' however, the student will find

enumerated for his perusal the best histories of our country. Some will amply compensate him for the perusal, and will be found to shed considerable light on the juridical history, the true policy, and the genuine resources of the United States, both individually and collectively: nor is there one unworthy the time expended in reading it. The history of this country has a superior claim to insertion in this Course, as it illumines the paths in which we are obliged to walk, and likewise, as it is more apt, we think, to be neglected, than the histories of other countries. With respect to the Lectures of Dr. Priestley, they contain so much of the philosophy of general history, in a small compass, that they appear to us entitled to particular notice; more especially as they serve as an excellent introduction to the science of political economy.

(Note 2.) JOYCE'S ANALYSIS OF THE WEALTH OF NATIONS.—In recommending Joyce's 'Analytical Abridgment,' of Adam Smith's 'Wealth of Nations,' we would by no means be understood to undervalue the justly celebrated original. As a science, political economy was perhaps in its infancy when Adam Smith assumed the pen. We reverence him as the great father of political economy, but since his time, several writers of different nations, profiting perhaps by the light shed by their great master, have given to the world treatises also highly worthy of perusal. From this consideration, together with the fact that the opinions of Smith are accurately stated in the abridgement, and that subsequent writers have amply annotated on all the peculiar views of that illustrious author, we have thought the work here recommended sufficient, at least for the present. At a future period of more leisure, the original may be taken up, with as much pleasure as propriety. If the original be read, as it will be by

all who cannot obtain the abridgment, the student will procure Playfair's edition, which is accompanied with notes, supplementary chapters, and a life of Dr. Smith

(Note 3) STEUART'S INQUIRY, &c.—We sometimes feel so grateful to the author who first directed us in the pursuit of a particular science, and imparted to us a fondness for it, that our judgment as to the worth of his production is, perhaps, not entirely to be relied on. Accident, not selection, placed this work in our hands: the topics were then all new to us, and we read and studied it with delight

If it were possible, however, to separate ourselves from this bias, we should still say that this valuable production is too little known, that it has been unkindly dealt with by a public, which has lavished all its praises on a succeeding writer, forgetful of the light which this author perhaps received from it, that it has been consigned to a partial oblivion from the size perhaps of the volumes, the modesty of its author, the familiarity and simplicity of his style, and mode of treating his subjects, and the seeming absence of learning: as he has scarcely in one instance quoted an author, but has apparently written his treatise from the stores of his own mind and *currente calamo*. Circumstances, however trivial, sometimes occasion an author to be fashionable, and an almost exclusive favourite, and consign others to unmerited oblivion. Charmed, as we have always been, with this work of Sir James Steuart, we must believe that others would derive similar pleasure, and restore it to its station, beside the 'Wealth of Nations.' Let not the student then be alarmed at the size of two quarto volumes of six hundred pages each, as the margin and type are very large, and the work contains not more reading than that of Smith. This is mentioned in order to remove those trivial obstacles which sometimes prevent the

perusal of the most meritorious works. Sir James Stuart was among the earliest advocates of the Mercantile system of political economy

(*Note 4.*) GANILH'S INQUIRY INTO THE SYSTEMS OF POLITICAL ECONOMY.—This work, for so comprehensive an inquiry, is perhaps more level to the comprehension of young minds, and more distinctly unfolds the philosophy and great outlines of the science than any previous production. The various theories or systems of national wealth are briefly and clearly exhibited, and most of the interesting questions of political economy are as luminously stated, and as satisfactorily solved as the yet unsettled state of the science would admit.

(*Note 5*) MALTHUS ON THE PRINCIPLES OF POPULATION
An author is fortunate who, ambitious of popularity, has happily lit on some novel and striking theory. Read and admired by many, he is no less certain of being ridiculed, and censured, and even abused by others. For theories, be they sound or fantastic, are sure to create parties, and the happy author, if at all wise, will equally revel in the excitement of praise, and of opposition. The Rev Mr. Malthus, who published his work anonymously in 1798, and for a short time permitted it to be ascribed to his son; was not at first aware of the charms of that authorship which bears the name into all nations, and classes every reader either under a friendly or a hostile banner. In 1803, the work appeared under his own name, considerably enlarged and improved, and in a very few years attained its fifth edition. It has been translated into most of the continental languages; has obtained a wide and rapid circulation; been much lauded, and has found an equal measure of obloquy. His entire subject is arranged under

four cardinal divisions, to each of which is allotted a book, subdivided into chapters. In the first book he advances his startling theory of the ratios of the increase of population and of food, the former, as he conceives, being in a *geometrical*, the latter only in an *arithmetical* ratio,—so that ruin would inevitably overwhelm the human family, were it not for the equally certain counteracting operation of various checks to population, which it is the province of statistics and of political economy to investigate, and of rulers to regulate and to apply.

The learned author believes that all animated life (vegetable as well as animal) has a constant tendency to increase beyond the means prepared for its proper nourishment, and that both are kept upon a salutary level, by numerous controlling causes. He contends that the natural or unchecked increase of population, goes on in a geometrical ratio, doubling itself in about twenty-five years, and that, under peculiar advantages, it might possibly increase at that ratio, in from twelve years and a fraction, to even as small a period as ten years. But he takes twenty-five years as the medium rate of increase, when population is freed, or nearly so, from all restraints.

On the other hand he ingeniously argues that the means of subsistence, under corresponding favourable circumstances, increases only in an arithmetical ratio; from which he infers that, if we take a portion of the earth—as for example, England, and assume its population to be eleven million, and its present produce equal to the easy support of that number, ‘in the first twenty-five years,’ says he, ‘the population would be twenty-two million, and the food being also doubled, the means of subsistence would be equal to this increase. In the next twenty-five years, the population would be forty four million, and the means of subsistence only equal to the support of thirty-three million. In the next period the population would

be eighty-eight million, and the means of subsistence just equal to half of that number. And at the conclusion of the first century, the population would be a hundred and seventy-six million, and the means of subsistence only equal to the support of fifty-five million, leaving a population of a hundred and twenty-one million totally unprovided for.*

'Taking the whole earth instead of this island,' continues the author, 'emigration would of course be excluded, and supposing the present population equal to a thousand million, the human species would increase as the numbers 1, 2, 4, 8, 16, 32, 64, 128, 256, and subsistence as 1, 2, 3, 4, 5, 6, 7, 8, 9. In two centuries the population would be to the means of subsistence as 256 to 9; in three centuries as 4,096 to 13, and in two thousand years, the difference would be almost incalculable.'*

The natural power, then, of the principle of population being so much beyond that of production, the human species 'can only be kept down to the level of the means of subsistence, by the constant operation of the strong law of necessity, acting as a check upon the greater power.'

The outlines of the theory being stated, the author then proceeds to consider in detail the evidences in all nations, and at all times, of the alleged checks to population, this occupies his first and second books.

In the third book are unfolded the various systems or expedients adopted or proposed by society, or by political economists for the remedy of the evil. And in the fourth and last book are suggested the author's views as to the future means to be adopted to equalize the means of subsistence and the demands of population.

* Malthus on Population, Vol 1, p 12, 13

In respect to this extraordinary production, we believe it will be found, like some other theories of a daring philosophy and untrammelled genius, to contain many elements of truth, with much of the alloy of human fallibility. Like the fascinating theories of Lavater, and of Gall and Spurzheim, the theory of population seems to bewilder, to charm, and to disgust, from the heterogeneous mixture of truth and falsehood. No rational mind, we presume, can be insensible to the lights of physiognomy, and of phrenology, as far as they are really collected from nature by a strictly inductive philosophy. And so with Malthus' bold, original, and no doubt, partly true conception. But as these theories, in the hands of enthusiasts, or of people of doubtful judgment, may seriously affect our system of morals, of physics, and of politics; however delighted we may justly be with them, as replete with genius and research, we pray permission to extract from them the true ore; and, if practicable, to reject the dross—in other words, to read and believe with great caution; subjecting every thing to experiment, or its equivalent, the laws of a most rigid induction.

In conclusion, we would observe that, if there be truth in this theory of population, no country is more interested in it than ours; and none so well adapted to test its truth. Our reasons for this belief need not be stated, as they will readily be suggested to the student, when reading this extremely plausible, very interesting, and we may add, (if when read with the caution already intimated) equally valuable production of Mr. Malthus.

(*Note 6.*) SAY'S POLITICAL ECONOMY.—Jean Baptiste Say is justly entitled to rank among the most distinguished political economists. He is the author of several other works on the subject, which, with the present, have been translated

into most of the European languages, and are all remarkable for their inductive philosophy, method, clearness, and exemption from the prejudices of theory. The edition recommended is the fifth American, translated by C. R. Prinsip, with notes; and accompanied for the first time, with a translation of Say's Introduction, by Clement C. Biddle. This valuable Introduction, which had been strangely omitted in the previous English editions, contains an able vindication of Political Economy against the charge of vagueness and uncertainty, arising from its numerous theories, and the unphilosophical mode in which it has often been treated. The boundaries are also defined, which distinguish it from politics, statistics, physical geography, &c, and the true aim and scope of the science are well marked out, and the different theories clearly and satisfactorily explained. The work is replete with illustrative and highly interesting facts, and calculations. On the whole, we regard it as one of the most valuable accessions which has been made to this important science.

(*Note 7.*) PITKIN'S STATISTICAL VIEW.—Political economy would be a speculative and unprofitable science, were it not for statistical inquiries they furnish practical results with which to compare our theories, and by which to test their soundness or their fallacy; for both the maxims of policy, and the speculations of philosophers, must eventually be tested by experience. Statistical inquiries prove that the interests of a country, and the methods of pursuing them, are greatly dependent on the local situation of that country, the nature of its government, the character of its people, and even its soil and climate, and consequently, that the destinies of a people are not to be fashioned by speculative laws, so much as by consulting their constitutional tendencies and inclinations.

The elaborate and systematic investigation of Mr Pitkin demonstrates the real interests of this country, and the species of policy that should be adopted by its government. It should be studied by all, who to the learning of Smith, Steuart, Gamlh, Lauderdale, Malthus, Young, &c desire to add the wisdom of experience. The works of Pitkin, and of Seybert, the Statistical Manual of Blodgett, and the Tabular Statistical Views of Watterston and Van Zandt, are the only American productions of any note, on this subject. In these the student will find every thing relative to the resources and financial concerns of this nation, and a few days of attentive study will furnish him with clearer views of the wealth and power which flow from agriculture, manufactures, and commerce, than could be gained by perhaps as many years of desultory and casual inquiry, or even by the most attentive reading of merely theoretical works.

(*Note 8.*) HAMILTON'S REPORTS ON A NATIONAL BANK, &c. In the infancy of our republic, different views were entertained as to the constitutional right of Congress to establish a bank, and strong doubts were also expressed even as to the utility of any such institutions. Both points seemed to be put to rest by the creation of a national bank, which proved its own utility, and in a great degree, suppressed the constitutional scruples on the subject. Party excitement, however, which had originated the two objections we have stated, revived them, and the bank was permitted to expire. After a lapse of some years the necessity for a bank was again agitated, and the points of objection were again started; but the luminous views of Hamilton had a second triumph, in the establishment of another national bank, the fate of which, as it seems, is again to be that of its predecessor. The constitutional question, nevertheless, appears to be nearly, if not wholly abandoned; and

the point now turns, rather on its form and powers, than on its utility, or constitutionality. The signal ability of the Reports of Alexander Hamilton, cannot be questioned, and merit to be carefully studied, as beautiful specimens of the almost creative powers of genius, in the formation of a system out of elements furnished by his own pure mind, unaffected by the primitive and rude materials of a yet unformed and inexperienced society—Vide Hamilton's works, vol. III. p. 1 to 155.

(Note 9.) BOLLMAN ON BANKS, &c.—Our national and individual pecuniary embarrassments, consequent on the war of 1812 with England, the suppression of specie payments, the curtailing of bank discounts, and other distresses of the commercial world, together with the organization of a national bank, gave rise to numerous essays on these topics, several of which will be read with profit and interest, after the causes of their origin are no more, and our country is again blessed with all the consequences of successful commerce. Sensible and well written essays on these subjects, not being the mere *a priori* speculation of closet philosophers, but inductions from *existing facts*, and pressing exigency, will be found generally practical and useful, and often contain, in a few pages, that information which we may in vain seek for in elaborate treatises on political economy. The essays of Dr. Erick Bollman and Mathew Carey, are decidedly the best which have appeared, and will compensate the student of any age or country for their perusal.

(Note 10) JOHNSON'S INQUIRY, &c.—It not unfrequently happens, as we have just observed, that ephemeral productions, the offspring of exigency, and ushered into the world in the shape of pamphlets, to effect a particular object, possess

more intrinsic merit than those, which having a more specious form and appearance, often descend to posterity by the gravity of their *material* substance, rather than the worth of their *intellectual* contents. This remark applies with great force to a number of essays, which the extraordinary and anomalous situations of the moral and political world for the last thirty years have occasioned, and which, for the sake of philosophy, should be rescued from that oblivion which so universally attaches to this species of productions.

But in winnowing in so ample a field, the greatest caution should be observed, for scarce one in a hundred of these is entitled to outlive the hour which gave it birth. In these pamphlets, however, we sometimes find much learning perspicuously arranged, and unfolded in a pure and classical style. they occasionally contain the substance of more extensive treatises, and also new and valuable ideas, which are forgotten, or leave but faint impressions, because given to the world under the modest appellation of 'Essays,' or 'Thoughts.' We have no doubt but that opinions worthy of Newton, Kepler, Bacon, or Boyle; of Grotius, Wolfius, or Montesquieu,—such in fine, as have eternized their names, and enrolled them on the imperishable scroll of fame, may have been previously advanced by humble, unknown, or forgotten essayists, and first attracted observation when illumined by the splendour of a philosopher's name, or perhaps, when urged into notice by the magnitude of the volume containing them. We would not be understood, by these remarks, as we have just hinted, to encourage the habit of indiscriminately perusing the pamphlets almost daily issuing from the press, and only distinguished by noisy verbiage, and passionate vituperation, or vain and speculative notions. Students may be permitted, to be so economical of their time, as

seldom to read a pamphlet until the voice of general approbation presses it upon their notice.

To the pamphlets which we have recommended in this Course we advise due attention; such as '*War in Disguise*.'* '*Answer to War in Disguise*' '*Examination of the British doctrine*,' &c. '*Address of the Minority*,' &c. '*On the constituent's right to instruct his representative*.' '*Review of the Federalist*,' the pamphlets of Dr. Bollman, '*Johnson's Inquiry*,' &c. all of which are productions of great merit, and will be found worth perusal, long after the time and circumstances to which they were indebted for their birth.† Finally In respect to such essays, pamphlets, and other short works, as we have generally recommended under the head of 'Miscellaneous,' we would apply an observation made by M. Dupin, on similar productions. '*Ces ouvrages ne forment qu'une brochure de 64 pages. Ce n'est qu'éléments et results. J'aime beaucoup à indiquer ces écrits d'hommes savans Ils sont oubliés parce qu'ils sont courts, et ne sont courts que parce qu'ils sont tout en solide, en vie, en substance.*'

* Vide ante Title VIII. p. 448 No 7, 8, 9

† Vide ante Note 30, on Title III page 286 also Note 8, on Title XI.

AUXILIARY SUBJECTS.

'The sparks of all sciences in the world, are raked up in the ashes of the law'—*Frucht*

'Ipsa multarum artium scientia etiam aliud agentes nos ornat, atque, ubi minimo credas, eminent et excellit'—*Dialog De Orat Cap xxxii*

'Education is a companion which no misfortune can depress, no crime can destroy, no enemy can alienate, no despotism enslave At home a friend—abroad, an introduction—in solitude, a solace—and in society, an ornament It chastens vice, it guides virtue—it gives at once grace and government to genius Without it, what is man?—a splendid slave, a reasoning savage'

(*Note 1.*)

DIVISION I

THE GEOGRAPHY, AND CIVIL, STATISTICAL AND POLITICAL
HISTORY OF THE UNITED STATES OF AMERICA

1. Marshall's Life of Washington. [*Edit 1831*]
2 vols
- E. e. 2. Williams' History of the State of Vermont,
1809, 2 vols
- E. e. 3. Belknap's History of New Hampshire, 1792,
3 vols
4. Hubbard's History of New England, 1815
- E. 5. Hutchinson's History of Massachusetts, 1764,
1828, 3 vols
[And Minot's Continuation, 1789, 2 vols]
- e. 6. Trumbull's Civil and Ecclesiastical History
of Connecticut, 1818, 2 vols.
- e. 7. Smith's History of the Province of N. York,
1757.
- E. 8. Smith's History of New Jersey, 1765
- E. 9. McMahon's History of Maryland.
- e. 10. Proud's History of Pennsylvania, 1745.

- e. 11. Stith's History of Virginia, 1747
 E. 12. Jefferson's Notes on Virginia.
 E. 13. Williamson's History of North Carolina, 1812.
 e. 14. Ramsay's History of South Carolina, 1809, 2 vols
 E. 15. McCall's History of Georgia.
 E. 16. Breckenridge's Views of Louisiana.
 17. Flint's History and Geography of the Western States.
 18. Pitkin's Political and Civil History of the United States, 1828, 2 vols.
 19. Lyman's History of the Diplomacy of the United States, 1828, 2 vols.
 E. 20. Williamson's History of Maine, 1832, 2 vols
 E. e. 21. Botta's History of the American War, from the Italian, 1826, 2 vols.
 e. 22. Flint's Geography of the Mississippi Valley, 1832.
 E. 23. Long's Expedition to the Rocky Mountains. 1823, 2 vols.
 24. Pain's Political Writings. (Note 2)
 E. 25. Diplomatic Correspondence, by J. Sparks.*

* [Connected with the civil and political history of our nation are the lives of many of her statesmen, lawyers, and soldiers, some of whose biographies have been sufficiently well written, and others yet wait for the more classical and learned pen of a future age. We may also here mention the following works: Sparks' Life of Gouverneur Morris, Austin's Life of Gerry, Quincy's Life of Quincy, Johnson's Life of Green, Irving's Life of Columbus, and the works entitled, 'Biography of the Signers of the Declaration of Independence'—and 'National Portrait Gallery of Distinguished Americans']

Although we bring to the student's notice nearly all who have written on these subjects, he will bear in mind that the entire list, together with those that will be necessarily added to it, is designed for his occasional reading during the whole period, perhaps, of his life, and that the student who undertakes the Course designated by the letter E, is expected to read *during his four years novitiate*, those works only which remain after ejecting all designated by that letter, and the like remark applies to the Course designated by the letter e, which excludes all to which it is annexed, as also all embraced by the letter E, leaving in both cases much the smaller part of the enumerated works.]

Robertson's
History
of
America

Gordon's
History of
Independence

Ramsay's
History
of
American
Revolution

Burke
History
of
Virginia

Jones
and
Gordon's
Confederation

NOTES ON THE FIRST DIVISION.

(*Note 1*) THE mottoes we have affixed to this division will receive forcible demonstration from every scholar's experience, who has bestowed the slightest attention on the operations and progress of his own mind. Perhaps the acquisition of the widest and most diversified knowledge is less grateful, even to the most inquisitive understanding, than the intellectual activity, acuteness, and energy which are generated under the discipline, which every seeker of knowledge necessarily acquires. Thus the greatest learning may be deemed most valuable, because it augments proportionally the capacity to learn. The moral sciences, besides, are so closely allied, that it is difficult to select one on which illustration cannot be reflected from others. A liberal mind, however zealously devoted to a particular profession or pursuit, discovers its zeal, not by confining its view to that alone, but by collecting from all the range of science and art whatever may perfect and embellish it; as a true lover of his country exhibits his attachment, not by wedding himself to its soil, but by exploring and importing the improvements of others. To every professional character it is desirable, moreover, to be as little infected, as possible, with the pedantry of his science; to mingle the ideas constantly forced and engraved on his mind by his particular pursuits, with those derived from intercourse with other men and other books. The lawyer, whose vocation brings him more frequently into the current of the world, than any of the other liberal professions, it particularly behooves to be uninfected with those prejudices and peculiarities of mind, those eccentricities of manner and expression, which arise from men's particular avocations, which colour, and too often circumscribe the operations of their talents, and which Lord Bacon quaintly, but forcibly denominates the '*idola tribus*'

This consideration, which will seem trivial only to those who have not duly appreciated the repulsion produced by peculiarity either of thinking or manner, is still more important in America, where the lawyer possesses, perhaps, a more than ordinary share of consideration, and influence. And as it is from the *students* of this profession, at least, if not from its practitioners, that the nation draws the largest portion of its legislators and statesmen, there is an obvious reason for somewhat enlarging the circuit of the law student's education, arising from this probable combination of the politician with the counsellor.

While we thus consider the sciences and the arts as a family connected by very intimate ties, there are some of these between which the relation is more extensive and obvious. The physician, the divine, and the lawyer, while they will aim, if they possess a liberal understanding, to extend their conquests into every region of letters, must, in their own defence, make very solid acquisitions in some, between which and their own particular province there exists a closer connexion. It is, we think, the felicity of the jurisprudent, that the collateral topics to which the study of his profession compels his attention, are more the topics of common life than those auxiliary subjects which engage the divine and the physician; and better fit him for the business and converse of men.

His very title imports an extensive acquaintance with the nature and principles of men's mutual obligations, and to discern and apply these under all the modifications of circumstances, demands both extraordinary acuteness of mind, and enlarged acquaintance with human affairs and human passions. The politician, whose pursuits are nearest allied to his own, requires less, perhaps, of this subtilty of intellect, and this knowledge of men, as the points with which he is concerned are more palpable to the common sense of mankind; and as effects may be computed with more certainty, when they are to be wrought by communities, who must be swayed

by general interests, than when they depend on the infinite caprices of individual passion and understanding. A lawyer must be a philosopher to detect, a logician to reason, a poet to describe, and an orator to persuade and if it be objected that this resembles too much the extravagance of Cicero, who unites in his 'Orator' every feature of a various and perfect genius, this general disposition to combine in our own profession the excellencies and the talents which are requisite in others, may tend at least to prove what we have before declared to be our conviction,—the connection of all the branches of science, and the necessity, if we are emulous of distinction in our own pursuits, of not being entirely ignorant of those of others.

It is not for us to designate the methods of attaining this general knowledge, 'this armour and accomplishment at all points,' we are only to designate such subjects as have a more immediate connection with law,—and, consequently, which possess a particular claim to the attention of the American law student they will be found under the preceding, and the eight following divisions. We presume and hope, that General History and Biography, Belles Lettres and General Morals, and all that can improve and adorn the mind, will receive from the student some attention, but the History, civil, political, and natural, of our own country, *Legal* Biography, and Bibliography, the Eloquence and Oratory of the *Bar*, and the particular Duties and Conduct in life of the lawyer, we are unwilling to leave to presumption and hope. These subjects, therefore, are embraced in our Course.

The student will recollect that, in our Introduction, we have recommended that the title 'Political Economy,' as also the several *Auxiliary Subjects*, should be studied at the same time with those of the other titles,—that is, throughout the whole Course, and, perhaps, during some years after our student has come to the bar. In this way these auxiliary and highly essential branches will afford a pleasing variety, and relieve the mind, when exhausted, by deeper studies. It is

well known that Chancellor d'Aguesseau was accustomed, after the fatigues incident to his official duties, to seek relief by a change of studies; and that he found it even in mathematical works. A friend having expressed surprise at this, which he conceived to be adding to his exhaustion, 'No,' replied the chancellor, 'a change of study has ever been to me a relaxation.'^{*} Nor need our students be alarmed at the apparent magnitude of the studies recommended under the head of *Auxiliaries*. They are, in truth, very inconsiderable, when compared with those pursued by many who have attained great eminence in the law. Need we refer to Bacon, to Hale, to Fearne, to Butler, and to many others equally known in the history of English Jurisprudence? D'Aguesseau was himself an eminent instance. He was a profound lawyer, a successful legislator, a voluminous writer, and an indefatigable judge, and yet was well versed in mathematics, a master of his own language, of the Latin, Greek, Hebrew, Italian, Spanish, Portuguese, and English languages; and also a polite scholar in nearly every branch of the arts, and even of the exact sciences. In the midst of all these studies and various occupations, it is further related of him, that *time never failed him* during the course of a long life, but he was enabled daily to read a portion of the Holy Scriptures:—and yet, even this illustrious man falls behind some who might be named as monuments of learning, of industry, and of the art of economizing the fragments of time. Study, like idleness, may become an inveterate habit; and if a life be fully occupied, the result seems to surprise us, in the same way as we contemplate almost with incredulity, the augmentation of a unit through a comparatively small geometrical series. To the light and careless, but still ambitious student, an extensive library, or the massive writings of an individual, or the numerous occupations of a statesman, on whom repose, perhaps, the destinies of a nation, are objects of deep and unfeigned surprise, often accompanied with pain and despon-

^{*} Butler's Life of D'Aguesseau, p. 46, vide also ante Note 21, p. 558

dency. But to the zealous and methodical student, all things seem possible. The industry of a Magliabechi, or of an Abbé de Longuerue, the genius and learning of a Leibnitz, a Bacon, or a Newton, are to him but incentives; and though he sees them at an immeasurable distance before him, he still knows there are many intermediate stages of great excellence and of lasting honour, which are certainly attainable. There is a class of students, however, whose industry and zeal seem to be principally excited and sustained, by the hope of those direct emoluments which flow from the exercise of a *profession*, and who are therefore too apt to limit their researches to what they manifestly perceive are of mere *practical* utility. There is danger in this. Professional excellence of the highest order may not be hoped for by those who encourage such narrow and sordid impulses; the science should be *loved for its own sake*, study should carry with it the pleasures which intrinsically belong to it, and every student, in contemplating his books, must look on *them* as his most constant, and disinterested friends. *Hi sunt magistri qui nos instruunt sine veigis et ferula, sine verbis et colera, sine pane et pecunia. Si accedis non dormiunt, si inquiris non se abscondunt, non remunerant si oberres, cachinnos si ignores* *

It should be the desire of every law student that his friend can with truth say of him, '*Eum vidi in Bibliotheca sedentem, multis circumfusum LIBRIS. Est enim, ut sis, in eo INEXHAUSTA AVIDITAS legendi, nec satiari potest.*'†

(Note 2.) The political writings of Thomas Paine belong to the history of our country, at its most interesting period. Eminently endowed with intellectual force, and possibly, with virtue, at the time he rendered such valuable services to the cause of American independence, we have only to deplore his subsequent loss of mind and of morals, when he drank in all that was infamous and wicked in the demoniac philosophy of

* Richard of Bury

† Sed vide Cicero De Finib — lib iii sec 2

the early revolutionists of France, and became as remarkable for his crusade against religion, as he had been in his noble exertions in the cause of freedom.

DIVISION II.

‘Maximus vero studiorum fructus est, et velut præmium quoddam amplissimum longi laboris, extempore dicendi facultas quam qui non erit consecutus, mea quidem sententia civilibus officiis renunciabit, et solam scribendi facultatem potius ad alia opera converteret’—*Quint De Orat Lib x Cap. vii.*

‘With what importance does the young orator appear to the multitude’ in the courts of judicature, ‘with what veneration’ When he rises to speak, the audience is hushed in mute attention, every eye is fixed on him alone, the crowd presses round him, he is master of their passions, they are swayed, impelled, directed, as he thinks proper. These are the fruits of Eloquence, well known to all, and palpable to every common observer’—*De Causis Corruptæ Eloquentiæ, sec vi.* [Murphy’s translation.]

FORENSIC ELOQUENCE AND ORATORY

1. Blair’s Lectures on Rhetoric and Belles-Lettres. [*A careful revision of the following Lectures, xxv xxvi. xxvii. xxviii. xxvi. xxxii. xxxiii. xxxiv.**]
2. Hume’s Essays, vol. i. Essay xiii. ‘Of Eloquence.’
3. On the Eloquence of the Bar. [*Read 2 vol. Rollin’s Belles-Lettres.*]
4. Quintilian’s Institutes of the Orator. [*Patsall’s Translation*] (*Note 2*)
5. Cicero De Oratore. [*Guthrie’s Translation.*] (*Note 3*)

* [We recommend a revision of these lectures of Dr Blair, as we presume that every student of law has previously read the work, if it did not form a part of his collegiate course. These lectures will serve as a suitable introduction to the study, into which the student is now about to enter, and which, in common with the other Auxiliary Divisions of our Course, may also occasionally occupy such portions of his hours, as can be judiciously separated from those sacredly dedicated to his regular legal studies,—always subject, however to the restrictions contained in our Introduction. Vide ante p 38, &c.]

6. Dialogue concerning Oratory, or the causes of Corrupt Eloquence. [*Vide Murphy's Translation of the works of Tacitus*] (*Note 4*)
- E. e. 7. Aristotle's Rhetoric. [*Dr Gillies' Translation, London, 1823.*] (*Note 5.*)
- e. 8. Campbell's Philosophy of Rhetoric (*Note 6*)
- E. e. 9. Principles of Eloquence, adapted to the Pulpit and Bar, by the Abbé Maury.
- E. e. 10. Lawson's Lectures on Oratory.
11. Dr. Whately's Elements of Rhetoric. [*From the 3d English edit Cambridge, Mass. 1832*]
- E. e. 12. The Orations of Lysias and Isocrates. [*Gillies' Translation.*]
- e. 13. The Orations of Demosthenes. [*Leland's Translation.*]
- e. 14. The Orations of Cicero. [*Select Orations translated by Guthrie, and those against Verres, translated by White*]
- E. e. 15. Chapman's Specimens of Forensic Eloquence. [*And Campbell's Continuation.*]
16. Lord Erskine's Speeches. [*American edition in two volumes.*]
- E. e. 17. Curran's Speeches.
- e. 18. Webster's Speeches and Forensic Arguments. (*Note 7.*)
19. Introduction to Webster's American Dictionary.
20. Pickering's Vocabulary of Americanisms, with an Essay on the present state of the English language in the United States. [*An extremely valuable work which ought to be in the hands of every student in the country*]

The attention of Law Students to this particular Note.

NOTES ON THE SECOND DIVISION.

(Note 1.) ON THE ELOQUENCE OF THE BAR.—Under this head we have mentioned the most popular and useful works on rhetoric, &c and some of the best collections of speeches.

The student scarce needs to be reminded by any remarks of ours, of the importance of this branch of his legal accomplishments, and for instruction in the arts of rhetoric, and for models of oratory, we refer him to the works we have selected.

The only general maxim which can be proposed to him who is emulous of a clear, correct, and felicitous elocution, is to render himself familiar with the best models of English style, both in prose and verse. Though the eloquence of the bar is comparatively severe and unornate, and the advocate seldom has occasion for poetical imagery, he may often require that comprehension of expression peculiar to the poet, and though his topics are for the most part technical, they may occasionally derive illustration from all the varieties of literature.

Nothing is so often wearisome to the auditors of the advocate, as the long citations he is under the necessity of making from legal authorities, except it be the drawing and careless manner in which they are read. The reading of an authority, if not the signal for inattention, especially to juries, is at least a forewarning of fatigue. Policy, therefore, might dictate more attention to this matter. Lord Mansfield, it is said, possessed the art, by the agreeableness of his reading, to render even a *statute* interesting.

The speeches of lord Erskine are perhaps the best models of bar eloquence we possess. equally remote from calm frigidity, and frothy declamation, they appear to us to form a very happy combination of that good sense which is the strong feature of English literature, and that powerful enthusiasm in which it is perhaps deficient. Even in his boldest flights there is a controlling propriety, which disposes us to believe that he has rather constrained than exaggerated his feelings, and which, it

is evident, do not on that account affect us the less. We are disposed to a stronger recommendation of these speeches, from believing that the taste of our nation, (if there be not a deeper and more permanent cause to be found in its character) disposes us to an imitation of the florid eloquence of the Irish school, rather than of the chaste and tempered models of which we have been speaking.

If there is any great work in English literature, to which we should direct the particular attention of such as are studious of their style, it is *Hume's History*, the composition of which, however carefully elaborated, has not more elegance than ease, and holds, to our view a desirable medium between the old, natural English style, and the more artificial, stately, antithetical, and balanced manner of modern days. And while on this topic, we would suggest to the student, belonging, as he does, to a profession which forms so large a portion of the *literati* of the country, the propriety of a strict adherence to the *established standards* of the English language, and of rejecting the numerous innovations which, while they subserve a temporary and inferior convenience, may issue in worse effects than drawing on us the sneers of transatlantic critics.

It is matter no less of surprise than of just regret, that so little attention has been paid in our country to the arts of eloquence and oratory. Among a people so remarkable for fluency, so ardent, yet self-possessed, and so zealous in all that relates to the public weal, and in a country too, where debate scarce knows a restriction, but of sense and decorum, we should expect no penury of eloquence, on the contrary, that all its means, its beauties and embellishments, would be greatly valued, and studiously cultivated. Highly gifted, and even eloquent in conversation, and much practised in public speaking,—the anomalous fact still must be admitted that we have yet made but little progress in legitimate eloquence, and in the captivating graces and appliances of oratory. Forensic eloquence in England has as little to boast, as with us, and perhaps less. But the English are proverbially ineloquent, and

the constitution of their courts, their rigidly technical jurisprudence; the power of the crown, the multiplicity of business; and the expensiveness of litigation; with other causes, have greatly retarded the growth of the art in that country. The spell was broken, perhaps, by lord Erskine; for, until his splendid career, it can scarce be said that any English advocate had ventured far into this delightful region. It would be no easy task to account satisfactorily for the noble growth of English bar oratory. Theories are too apt to repose, in such matters, on some simple cause, when the matter is more justly referrible to a great variety of combined operations. If political liberty be the genial soil of eloquence, why should we find in the courts of France more accomplished models of oratory than in those of England, at a time, too, when the monarchy of France was nearly absolute, and that of England fast veiging on the confines of democracy? Political freedom, no doubt, is promotive of eloquence; but it requires other circumstances to foster its advancement. Something depends even on climate, much on the organization of the courts, the genius of the laws, the modes of business; the physical constitution of the people, the range of popular knowledge; the scheme of academic and university instruction. With the exception of constitutional liberty, France has had the advantage of England in all of these respects, and England, also, during many centuries, was scarce more free than her neighbour. Unlimited defence by counsel was at all times secured by law, and practused, in France not so in England,—and even since the statute of William III. the British judges and advocates seem so bound by the spirit of former times, that the warm current of oratory is chilled by the inveteracy of usage. In both civil and criminal causes the displays of English eloquence and oratory have been singularly partial and few. In the whole range of the Star-Chamber trials; in the State trials of after times, and in the civil causes for many centuries, we scarce find an instance of striking and commanding eloquence. The entire reigns of Elizabeth and James are barren of it. The new born liberty

of Charles' time, and the stirring causes which agitated the courts, created no eloquence, gave no spring to oratory and the days even of the Republic, so full of novelty and excitement, brought into the courts no warmth, no genial influences to awaken the deep sleep of this soul-enlivening art. In the trials of the regicides, in the subsequent reign, human nature would have its way, and they, in defence of their lives and liberty, became bold, fervid and sometimes eloquent. In France, and we believe in this country, the trials of such causes as those of Hampden, of Vane, of Sidney, Russell, &c would have commanded a much higher order of eloquence, and better displays of elocution, than would have been likely to have been manifested in England, even had there existed no such restriction as we have alluded to, for in the succeeding reign, if any cause of itself could have dissolved the spell which still covered eloquence with the blackest clouds, it was that of the seven bishops in 1688 * and yet it passed with scarce an effort that could claim the name for although one of their counsel was the '*silver-tongued*' Heneage Finch, so called on account of his eloquence, and for which his whole family are said to have been distinguished, yet we see no evidence in the report of the trial of this '*family faculty of a ready utterance*'

After the abolition of the Star-Chamber, and of the no less despotic and odious High Commission Court, in 1611, followed, as it was shortly after, by the statute of William, which authorized counsel to address the jury in cases of treason and felony, the lovers of oratory, as well as of freedom, might have hoped that the advocates of the day would have been roused from their lethargy; felt the burning influences of sympathy for the oppressed, and manifested them by the most fervid and commanding eloquence. But not so—in the very first case under the statute, Rockwood was not defended. His counsel, Sir Benjamin Shower, hardly ventured to speak; but, with the timidity of unaccustomed responsibility, he seemed

* Vide 4 State Trials, 305

more intent on apologizing for his own situation, than on seizing with alacrity the accorded privilege, and vindicating, with zeal and ability, the facts and law of his cause. Sir Benjamin, though deficient in the requisite spirit, was certainly possessed of talents and learning, but how could we look for eloquence from a spirit which could be induced thus to express itself—'My Lord, we are assigned as counsel in pursuance of an act of parliament, and hope that nothing which we shall say in defence of our client will be imputed to ourselves. If we refused to appear, we thought it would be a proclamation to the world that we distrusted your candour towards us in our future practice on other occasions'—A poor compliment to the judge, and strong evidence that the demon of tyranny still hovered in halls, now happily sacred to freedom.

In the reign of Queen Anne, forensic eloquence still lingered. This is the more remarkable, as the advanced state of literature and of fine writing, gave promise of a favourable change. The trammels, however, were not yet entirely broken: the time had not come when the multitude seeks the orator, when in the courts he is venerated, when the audience, hushed in mute attention, fix their eyes on him alone, when the crowd presses around him, who is master of their passions, and who sways and impels them as he directs. Such were the delightful fruits of eloquence among the Romans; to them so well known, and palpable to every observer.* But during the reign of this queen, we find no such ardent and generous spirit. Occasions often happened, sufficient, one would think, to have roused the dullest intellects: but the so called *golden age of English literature*, and the mild government of the *good Queen Anne*, produced no change in the staid habits of English lawyers, in their mechanical, technical, and narrow views in regard to the argument of their causes. Fortunately, eloquence was by no means in so humble a state in some of the other forums. The discussions on the subject of the

* Vide the second motto affixed to the present Division—ante page 600

Union, were of general interest, and gave rise to some new trials, which afforded to the courts specimens of eloquence well adapted to improve the extremely frigid manner of the bar. Lord Belhaven's Speech in the Scotch Convention, against the Union, is so unlike the general manner of his time, so marked by firmness, feeling, candour, and independence—so true to nature, and full of the importance of the subject, that it must have produced a wonderful effect on his audience. A portion of this very species of eloquence, blended with the substantial, considerate and calm manner then, and even now, so common in England, would have produced that happy medium between the florid and the severe, the passionate and the grave, which seems to mark the growing character of American eloquence, and which now forms the received ideal standard of British eloquence, occasionally exemplified, however, in that country, in the most illustrious manner. But the reign of Queen Anne passed on without any signal general improvement either in eloquence or in elocution. Still, the gradually improving condition of parliamentary and of pulpit eloquence during the reigns of the two first Georges, and of the early part of that of the third, exerted a salutary influence in the courts, and the oratory of the senate, of the pulpit, and of the bar, began from those times, reciprocally to aid each other. What has been since done is of a much higher order, but still rather sparse and individual, than general or national. Eloquence and oratory are even at this day but occasional visitants in that country, they are not yet fully naturalized. This, in truth, is probable so to remain, or with but slight variations—for the eloquence and oratory of any people are faithful mirrors of their essential or national character, and that character in England seems to be deficient in several of the qualities which generate the loftiest eloquence. Individual examples to the contrary do occur, but as these splendid exceptions have been so little followed, it seems to prove the natural bias of the people to be such as we have stated. The reverse appears to be the case in the United

States—here the general *tendency* in nearly every department, is towards eloquence and oratory. Not only the pulpit, the bar, and the senate, indicate it, but the conversation of daily life manifests it in a remarkable degree—and yet how rare with us is true eloquence, how almost unknown is an high order of elocution! But we *have the tendency*, and a strong one too, which needs only time, opportunity, and some cultivation, to produce a school of oratory of the purest and most commanding character. Where there is so much *matériel*, the elements must refine and chasten each other; and among a people, not only remarkably free, but whose climate favours constitutional ardour, whose laws and institutions bring for debate before popular assemblies, nearly every political measure, and finally, in a country where the remark of Pericles is more extensively verified than in any other ever known, *viz.* that ‘he who has a formed judgment on any point, but yet cannot explain himself clearly to the people, might as well have never thought on the subject,’ eloquence of the highest order must eventually find a home, and a correspondent elocution take an equally abiding and elevated rank.* It is not our province to say in what eloquence consists—or how elocution is to be attained, we would incite the student to their cultivation, and his own mind and heart, with some instruction from books, &c. cannot fail to realize his aspirations.

The graces of eloquence and of oratory possess some charm for nearly every mind, but those who really have the chords that vibrate to the delicate touches of the orator, experience not merely a subdued gratification, but a positive delight, only to be compared with that felt by a refined musical ear, when listening to the accurate and chaste productions of a Handel or a Beethoven. There is music even in gesticulation, but that which is found in oral enunciation, often approximates very closely to the happiest combination of the harmony and melody of vocal or instrumental sounds, with the superadded advantage of receiving at the same time a perfect copy of the

* Vide post, Note 7 on this Title

speaker's thoughts. How commanding is eloquence in the pulpit, the senate and the forum, and how lifeless and inefficient are the chastest productions of either of these classes of speakers, when destitute of the graces of gesture, the fine modulations of a well-tuned voice, the correct suppression of the expletives and minor words, and the bold relief of the *words* expressive of the emphatic *idea*. 'Any thing overdone is from the purpose' of public speaking, and to a sensitive ear and eye, is extremely offensive,—and so of that which is underdone, or, in other words, of those speeches which are sluggishly delivered, without action of body, or even animation of eye and features. In such cases, the sentences, however pregnant with thought, still reach the mind as sounds void of ideas, or at least fail to produce their merited effect. Both of these classes of speakers, fatigue or disgust their audience, be their discourses in other respects ever so able. The one has set his diamonds in tinsel, the other has obscured their brightness with the oil of poppies.

This note might have been easily extended: the importance of its topic, and our strong desire to see forensic eloquence and oratory much more cultivated than they have been in our country, would have prompted us to a fuller inquiry, had we not been admonished that it is not within the scheme of our work, nor possible within its compass, to discuss with latitude the numerous subjects of importance, and of interest to the student of law.

(Note 2) QUINCTILIAN'S INSTITUTES OF THE ORATOR. Marcus Fabius Quintilianus was born at Calagurra in Spain, A.D. 42, and died about the year 124. At Rome he became a famous rhetorician, advocate, and critic, during the time of Domitian, who elevated him to the consular dignity. His '*Institutiones Oratoriæ*' is among the most valuable of the works of the ancients that have reached us, and was among the earliest that claimed the notice of the typographical art. The entire work will be studied with no less interest than

improvement: but we claim special attention to the *tenth* and *twelfth* books; the former, as it abounds with the most valuable and interesting remarks on the Greek and Roman authors; and details of the literature of past ages. and the latter, as it is rich in topics of novelty and utility, proper to be read also in connexion with the subject of Professional Department, which forms the Ninth *Division* of our Course. Quintilian, after having educated his orator in all the *learning* of his art, proceeds in this concluding book, to enforce the necessity of *good morals*, and prescribes some rules as essential to his certain and durable success. He ingeniously maintains that there can be no efficient eloquence, unless the speaker be an *honest man*,* points out the species of knowledge best calculated to improve the heart, and consequently to advance the orator's skill in the art of speaking, designates the particular dispositions of the mind which should be specially cultivated, speaks of the period in which the orator should commence his career, examines the difficult questions which arise as to the kind of causes which an orator is justified in advocating, and his conduct in their management; dwells on the matters which he should principally regard in *studying* his causes, and particularly those things which he should observe in pleading them; and concludes with some remarks on the various kinds of eloquence, and the adaptation of each species to the particular cause.

The student will sometimes find appended to this work an *Essay De Oratoribus, sive de Causis Corruptæ Eloquentiæ*. It is, indeed, a masterly production, but is erroneously imputed, we think, to Quintilian. It is more probable to be

* The ancients, under the head of Rhetoric and Oratory, embraced many other topics than those which seem to enter into the modern idea of those terms, ethics, law, politics, grammar, and even music, being regarded as essentials, and the rhetoricians taught these various subjects, so that orators passed directly from their schools, to become engaged in the duties of the Forum. In conformity with the notion that music and eloquence are closely allied, and should be so considered at the present day, an Essay was published by *Henry Upington, Esq* in the *Philosophical Magazine* of 1817, on the question, Whether music be necessary to the orator,—to what extent, and how most readily attainable!

the work of Tacitus, and, as such, Mr. Murphy, the elegant translator of his works, has also given a translation of this small treatise. The editions of Quintilian's works have been very numerous, and many of them splendid. The first edition printed at Rome, in 1470, folio, is extremely magnificent. The Declamations, often added to the early editions, are undoubtedly not genuine; they, however, may have belonged to his age. The most celebrated editions are the following: 1. The Leyden edition of 1665, with notes by various learned critics, compiled by Schrevelius and Gronovius. 2. The Leyden edition of 1720, by Burmann, reprinted at Padua, in 1736, and at Paris in 1725, folio. 3. The Leipsic edition of 1798, superior to any of the preceding. 4. Lüneman's edition, Hanover, 1826. The Paris edition of 1556, now before us, contains the *Declamationes*, but not the dialogues *De Oratoribus*, &c. The English translations are by Guthrie, in 1756—two volumes, with able notes, and Patsall's, in 1774, which is decidedly preferable, and is the one we have recommended to the general student.*

(Note 3.) CICERO DE ORATORE.—The rhetorical works of Cicero are entitled to great consideration, not only because he was deeply learned in all that the Greeks had written and done on the subject, but as he was himself the greatest of practised orators. They consist of, and are entitled,

I. DE INVENTIONE RHETORICÆ, written when he was about twenty years of age. It at present consists of two books, two others being lost, as some suppose, though the learned German editor of his works, Schütz, regards the work as complete in its present form.

II. DIALOGI TRES DE ORATORE.—This was written when Cicero had attained his fifty-second year, and is dedicated to his brother. It consists of a relation of the circumstances under which the dialogues or conferences took place, which is followed by a detail (not in the author's own person, nor as

* On the subject of translations, vide ante Note 2, page 85, &c.

one of the interlocutors,) of what was discussed on the subject of oratory. *Crassus*, an orator of high distinction, and *Antony*, his friend, and rival, but an orator of less note and learning, accompanied by the great jurisconsult, *Schevola*, and the young orators *Cotta* and *Sulpicius*, retire to a Tusculan villa of great beauty, belonging to *Crassus*, and after the elegant hospitalities of the place were extended, they all sought the shade of a spreading plane tree, and conversed with the utmost freedom on the interesting topics of oratory. The sadness so generally felt by the citizens, on account of the threatening state of the republic, gave them an additional interest in the conversation, as it dispelled, for the time, this gloom, and prolonged the conversation for several days, during which *Cæsar* and *Catulus*, likewise orators, joined their party. It is supposed that the real sentiments of *Cicero* are to be found, more especially, in what fell from *Crassus*.

As a didactic and regular treatise this work is certainly much inferior to *Aristotle's*,—but it derives great value from the ample experience of this most distinguished of Roman orators.

It was among the earliest works which attracted the attention of the typographical art, being printed at Milan as early as 1470, and at Venice, in 1485. The English translation, by *Guthrie* was published in 1755, and is accompanied by many useful annotations.

III. *BRUTUS, SIVE DE CLARIS ORATORIBUS*.—This is likewise a dialogue, the interlocutors of which are *Cicero*, *Atticus*, and *Brutus*. The scene lies in the pleasure grounds attached to *Cicero's* mansion at Rome. It is valuable as a history of Roman eloquence, including his own rise and splendid progress; and also for its interesting details of civil transactions. This work generally takes the name of *Brutus*.

IV. *ORATOR AD BRUTUM*.—This may be regarded as a sequel to the two last mentioned works, and treats mainly of the essentials to form a perfect orator, and of the true nature of Attic eloquence, as distinguished from that known by the name of Asiatic. This latter inquiry was designed, no doubt,

as a latent vindication of himself against those who found fault with his style as a departure from the Attic standard, by showing that the opinions often expressed as to the Attic manner are erroneous.

V. *TOPICA AD TREBATIUM* —The design of this small treatise is to analyse, in some degree, a work of Aristotle's on the subject of topics, or common places. It appears that Trebatius, (to whom it is dedicated, and who, perhaps, was but an imperfect Greek scholar,) expressed a wish that his friend Cicero would give him such a view of the Greek production as would unfold its general contents. This was accomplished during a short voyage which the great orator made to Rhegium, when he retired from Rome upon the death of the Dictator. It is further related that the task was performed wholly *ex memoria*, and from his thorough acquaintance with the original, his illustrations, also, being derived from the laws of his own country. Thus the work became essentially a new one, whilst it sufficiently explained the doctrine of topics, as set forth by Aristotle, and met the views of his friend.

VI. *DE PARTIONE ORATORIA* *DIALOGUS*.—This is a conference between Cicero and his son, in which are explained various matters relating to eloquence.

VII *DE OPTIMO GENERE ORATORUM* —This is a small tract designed by Cicero as a Preface to certain orations of Æschines and Demosthenes, which had been translated by him. One of the objects of the preface seems to be to revive the discussion as to the threefold division of eloquence into Attic, Asiatic, and Rhodian, and to illustrate the true nature of Attic eloquence, and the erroneous views entertained of it, by the different manners of these two orations.

(*Note 4.*) *DIALOGUE CONCERNING ORATORY, &c.*—In the second note of the present title, we made some mention of this dialogue *De Oratoribus, Sive de Causis corruptæ Eloquentiæ*. It has been ascribed to Quintilian, to Tacitus, to Suetonius, and to Pliny, and much learning and zeal (as is usual in such

cases have been exhausted in the dispute concerning the authorship; the question, however, remaining still unsettled, but with the scale largely in favour of Tacitus. It is admitted by all to be a 'performance of uncommon beauty,' and that its solidity is equal to its eloquence. The style, however, is rather ambitious and youthful; and if it be the production of Tacitus, it is only another proof among many that Attic simplicity, a forcible, concise and chaste style, may entirely supersede the ornate and Asiatic manner, so usual in early composition. We would by no means invite our student to waste his time, in the learned discussions of Gronovius, Lipsius, Ryc-kius, and others, as to whom is the author; but to make the production his own, by a careful study of its pages. Such inquiries are often unprofitable; but, it must be admitted, they are *sometimes* extremely valuable; not indeed, for their direct, but wholly for their collateral results. Who the author may be of the letters under the name of Junius is, *per se*, of little consequence; but the able researches on the question are valuable, to all who would cultivate the philosophy of evidence, and the nature of presumptive proofs; and with this view was it, that in a preceding note, we have enumerated, and recommended to the student's regard, a number of similar discussions.*

(Note 5.) ARISTOTLE'S RHETORIC.—Aristotle has been called the *inventor* of rhetoric; and by others he is said to be the *first* who reduced it into a scientific form. It is highly improbable, however, that either is strictly true; for the work is altogether too didactic, too regular, philosophical and perfect to have sprung, *per saltum*, from any one mind, even from that of Aristotle, who is *princeps philosophorum*. Knowledge has ever been progressive; inventions, and even discoveries are rarely, if ever, marked by excellence; but scientific treatises are always based on many preceding works of various merit: and this, we presume, to have been the fact, in respect to this great work on rhetoric. All, therefore, that can be inferred

* Vide ante 362, Note •

from the willingness of some to look to Aristotle as the original source of this art; and of others, to regard him as the first who fashioned it into a regular form, is that this great master has, in truth, so far excelled all others, that, in compliment to the supremacy of his genius, none prior to him shall be inquired after, or be much regarded. The same kind of overweening admiration led Boileau, (as Dr. Gillies remarks,) when speaking of this work, to say, '*Pour moi j'avoue franchement que sa lecture m'a plus profité que tout ce que j'ai jamais lû en ma vie.*'

We heartily respond to the feelings of the French orator, and to the boundless admiration of Aristotle manifested by Dr. Gillies, to whose accurate learning, and untiring industry, English scholars are so largely indebted, not only for the translation of Aristotle's best works, but for the mass of light shed on them in his very able annotations.

No one, we think, can part from the 'Politics,' 'Ethics,' and 'Rhetoric' of Aristotle, without indulging largely, in that unmeasured admiration, which stops not at the strict import of language, but loves to lavish epithets of praise; and to couple these vast exploits in the regions of knowledge, with those great military conquests over the outer world which were achieved by his youthful pupil; as if they were all indeed, the offspring of one and the same sublime intelligence.

It is the province of rhetoric to invent and arrange arguments,—and to clothe them in such agreeable and suitable forms, that (with the aid of logic, whose sole aim is to judge of them,) others may be convinced, persuaded, excited, and pleased. That rhetoric, both as a science and an art, is susceptible of great improvement, and that it may be efficiently taught, ought to admit of no doubt. Aristotle, Cicero, Quintilian; or, our own Blair, Campbell, and Whately, need not be referred to for proofs—as all experience is full of them. The most extensive knowledge; the most refined and classical taste; the finest intonations of voice, and the most graceful, natural gesticulation may still be deficient in the arts of eloquence

and of elocution; and they may all be highly susceptible of improvement by the rules and practice of the rhetorician. We are disposed to be the more strenuous on this subject, as the opinion among us is too general, that *orator nascitur, non fit*, or, the equally erroneous one, that a good mind, much practice in public speaking, and a knowledge of the particular subjects spoken on, cannot fail to render one, in time, sufficiently eloquent, without reference to any teaching of the art, or to scientific rules educed from what is called the philosophy of rhetoric.

We admit, indeed, that much may be effected in time by talents, knowledge of our subject, and by practice of the *Ars loquendi*; but how much more could be easily effected in the same time, and with even less knowledge, and less practice, were our public speakers to dedicate themselves, (as did the orators of ancient times,) to rhetoric, and logic, as *substantive* means of instructing them in the proper use of their mental and physical endowments, and of rendering their acquired knowledge subservient to the objects of all public speaking, viz. to convince, to persuade, and to please! How different would have been the result of the oratorical exertions of Sulpicius, of Antony, of Galba, and perhaps, even of Cicero, had they reposed mainly on their rather limited knowledge of the Civil Laws of their country, and neglected the powerful means and appliances of a highly cultivated oratory! With respect even to Cicero, it has been supposed that he relied more on eloquence and general knowledge, than on an intimate acquaintance with law as a science; and that the imputed Asiatic complexion of his oratory was, in some degree, owing to this fact. Schultingius, however, endeavours to vindicate Cicero, and to prove from the orator's own works, that he was deeply versed in the abstrusest points of Roman jurisprudence.* This we are inclined to doubt, not only from the language put into the mouths of his interlocutors, in the dia-

* Vide Schultingii Dissertatio de Jurisprudentia Ciceronis

logue *De Oratore*;* his allusion to the study of the Roman law, in the oration for *Munæna*, from the philosophical character of his treatise *de Legibus*, and in some degree, from the fact of the onerous and dry nature of this study arising from its being at that period reduced to no system, and from there being during the whole of the republic, few if any, authoritative treatises on the *actual* Civil Law. It is probable, then, that Cicero, in common with the orators generally of his day, was not deeply versed in the laws, and that by his thorough knowledge of oratory, as a science and an art, his philosophical and other learning, with the aid, probably of very ample briefs, furnished to his hand, he was enabled to gain so many laurels, and to suspend, so long, the fate of his country. We make this reference to the illustrious Roman orator, by no means with the view of giving the least preference to eloquence and oratory over a thorough knowledge of law, but merely as an example of how much may be done to improve our elocution, &c. and to render knowledge efficient, by a careful and distinct study of oratory, both as a science and an art, and to vindicate our position that, whilst the orator is not formed by nature, neither is he by the most extensive knowledge and practice, if he be regardless of those lights which are furnished by ancient and modern writers on rhetoric and logic, and finally, of all that enters into the objects and means of true eloquence.

(Note 6) CAMPBELL'S PHILOSOPHY OF RHETORIC.—This is a work of great and rare merit, which we are inclined to think has not been as generally read, as it is certainly entitled to be. Dr. Whately gives it a decided preference over the more popular work of Dr. Blair, which he thinks is greatly inferior to it, not only in depth of thought, but in ingenious and original research. He also very justly remarks, that the title of Dr. Campbell's work has, perhaps, deterred many readers, who have concluded it to be more abstruse, and less popular in its

* Lib. i. ch. 15, 26, 57, 58, 59. Lib. ii. ch. 19.

character than it really is.' It is further stated by this discriminating writer that the 'Philosophy of Rhetoric,' is occasionally obscure, but that his great defect arises from 'his ignorance and utter misconception of the nature and object of logic.'^{*} This, possibly, may be the case; but some allowance is perhaps due to Dr. Whately, who is himself an able author on the subject of logic; and whose opinions, however sound, if not acquiesced in, may have cast a shade, in this respect, over the writings of others. But, with the full admission of this imputed defect, arising from inaccurate views on the subject of logic, from which rhetoric is but an '*off-shoot*;' we regard Dr. Campbell's work as among the ablest and most delightful, that has come to our knowledge,—a work that may well stand associated with Aristotle's; and which every student of eloquence and of oratory should not fail carefully to study.

Dr. Campbell was Principal of Marischal College, Aberdeen, was born there, in 1719—and died in 1791. His work on Rhetoric first appeared in 1776, in 2 vols. 8vo.

(Note 7.) ORATIONS AND FORENSIC ARGUMENTS —Near the close of Note 1, on the present Division, ante p. 608, we ventured to express a belief that eloquence and oratory were destined in this country, to assume a more elevated rank than it has in modern times. It is remarked by Mr. Hume in his essay on Eloquence, that 'there is certainly something accidental in the rise and progress of the arts in any nation,'† and he confesses his inability to account for the great superiority of ancient to modern eloquence. It is, indeed, true that circumstances, apparently very small and inadequate, often give rise to, and advance the progress of the arts. They seem to be accidental, but are, in truth, essential and constitutional, and though small and latent, at first, they finally emerge into full light, and become the acknowledged parent of great and permanent results. The eloquence of the Forum, of the Comitia, of the Senate, and of the Rostrum, had their substan-

* Vide Whately's Rhetoric, p. 10.

† Vide Essay xiii.

tive causes, and each took its individual complexion or character from that of the audience, and the style of each was sufficiently diverse to show that permanent, and not accidental or fitful causes, existed among the people, for the love and power of eloquence in general, and for the production of its various kinds, according to the tribunal to which each was addressed. We therefore, differ again from Mr Hume, who, as we think, expresses the idea too strongly, when he says that the 'orators formed the taste of the people, not the people of the orators.' Is not the whole history of Roman and of Athenian oratory, on the contrary, indissolubly connected with a philosophical inquiry into the physical, intellectual, moral, and political condition of those people respectively? We think so, and that the causes of the modern degeneracy of eloquence, and its actual depressed condition among the European nations, and in this country, can be ascertained only by a similar inquiry respecting the character and condition of their people.

The eloquence and the oratory of France certainly differ from that of England, which again is distinguished from that of our own country. This cannot be owing to the education merely, of their orators; nor to any other causes resident only in them. The people of each nation, on the contrary, are physically, mentally, and politically characterized from each other, their circumstances, in all of these respects, are sufficiently different to produce a correspondent variation in the style of their oratory. The subject, in hand, is altogether too extensive, and delicate, for a note; and we give out these intimations, merely to incite our student to reflect on, and to investigate them, in proper season, and with due attention. The subject is highly worthy of consideration, it is one that has never been sufficiently examined, and we believe that if the oratory of Athens and of Rome be studied in close connection with a knowledge of the mental and physical character of those people, and with their political and other history, and all of this be compared with the character and institutions of the people of modern Europe, and with those of our own country,

the result will be that eloquence and oratory have not found their proper nourishment especially in modern Europe, owing to the absence of those very moral, intellectual, physical, and political causes, which existed among the Greeks and Romans, and which were the sole causes of the supremacy of their eloquence. And further, that (without any disparagement to the moderns,) it would be quite as unreasonable to look for the eloquence of Demosthenes, and of Cicero, in the British parliament, for example, or in the French chambers, as it would be in them to undervalue the Greeks and Romans, on account of their ignorance of numerous arts and sciences, which are the peculiar and matured products of our own times

In conclusion, we believe, (but desire to express the opinion with modesty,) that the diligent student of this subject would arrive at the conclusion that, if eloquence and oratory are destined ever to regain their elevated standing among modern nations, it will be in this western world of ours; where many causes, in no fancied degree similar to those which gave pre-eminence to this master art in Greece and Rome, are daily becoming more and more developed, and which must, in time, produce among us a closer approximation, at least, to that excellence in oratory, which all scholars so much admire in the abstract, and which the character and institutions of our people render it so necessary for us actually to possess

Those who have examined the subject in both countries, can scarce doubt that our forensic oratory differs widely from that of England, and, indeed, from that of all the continental nations, and that the scale greatly preponderates in our favour in this respect; so also, that our senatorial eloquence, is generally superior to theirs, and that all public speaking in this country is more remarkable for fluency, concinity, force, regularity of argument, and indeed, for most of the qualities of eloquence, and of a felicitous elocution, than is usual in other countries. That there are great defects in our public speakers, and great inattention to oratory, as an art, is certainly true; but the presence here of most of the causes, which were so ope-

rative among the Greeks and Romans, in the production of genuine eloquence, has not only produced among us its incipient stages; but, (what is more to our purpose,) has given rise to a prevalence of good speaking, with occasional excellence these are fast taking hold of the public mind, and promise much for the future. If Mr. Hume is to be believed, and he is high authority, the British have no relish for oratory, they are but little excited by it, nothing but the *ultra Attic* manner, even in the senate, and in the pulpit, is respected by them; and generally, no manner at all obtains at the bar. He thinks that the English standard of eloquence exercises none of the sublimer faculties of the mind, that it may be reached by ordinary talents and a slight application, and that the apathy, in regard to public speaking, is so great, that were the prime minister defending himself on an impeachment, more would crowd to the theatre, than endeavour to obtain admittance into parliament *. Such phlegm, in respect to the power and charms of eloquence, (had it continued) would have been fatal to its growth, and even to its existence, it is far from obtaining among us—wherever good public speaking is to be found, there are crowds, not only to witness but warmly to admire it.

And yet, since Mr. Humes' day, much has been done in England to remove the reproach of this charge, but it seems to require rare events, powerful excitements, to rouse the latent energies of this great and manly, and estimable people. What can be done, when so excited, witness the case of Warren Hastings! study the speeches of lord Erskine, of lord Chatham, Edmund Burke, of Sheridan, Pitt, Fox, and the few specimens vouchsafed by that brilliant *promiser*, sir James Mackintosh! and if you cross the channel, and get among a more mercurial people, read the more Asiatic orations of Mr. Curran! But such green and luxuriant spots in a long line of cold and sunless region, disprove not the general truth of the allegation, which is, that the British people, with all of their solid worth, their

high cultivation, and their general good taste, are yet as a people, eminently ineloquent; that their constitutional phlegm, the habits of the people, the structure of their government, the organization of their courts, and various other causes, unite to render eloquence and oratory admirable among them, chiefly in the abstract, and that however good judges then scholars may be, eloquence is likely to remain as little practised, and sought for by the people, in time to come, as in times that have passed. To American students, who may be destined for the bar, or for the senate, we think there are better hopes. Let them study then, all that is excellent in Roman, in Grecian, in British, and in American eloquence; and let them cultivate the philosophy and art of these subjects, as set forth in the pages of Aristotle, of Quintilian, of Cicero, and others, among the ancients,—and finally, in the best sources that can be gleaned among the moderns, without distinction of nation or of language.

DIVISION III.

‘The student of every class may derive a lesson, or an example, from the lives most similar to his own’—*Gibbon’s Memoirs*

‘Sine Libris, Deus iam silet, Justitia quiescit, torpet Medicina, Philosophia manca est, Litteræ mutæ, omnia tenebris involuta cimmeriis’—*Barthol de Libris legendi*

LEGAL BIOGRAPHY AND BIBLIOGRAPHY

I. LEGAL BIOGRAPHY IN GENERAL

It is as useful as well as pleasing interest which we feel in the lives of distinguished personages, especially of such as have been eminent in our own particular pursuits. We believe most ambitious minds, in the first pantings after distinction, have proposed to themselves some illustrious character as a model, whose sentiments they have imbibed, whose maxims they have practised, whose very errors they have copied, with a thousand times more ardour than can ever be

communicated by precept. Something of this we feel in reading of every eminent man we rise from our book with more love for knowledge, more respect for genius, more resolution to be diligent, more confidence in the success of exertion it is scarcely possible to contemplate such characters as Lord Hale and Sir William Jones, without a more zealous esteem of probity, and a consoling conviction of the prodigies which may be wrought by method and application; emotions similar to those we feel in remembering the heroes of classical literature on classical ground, and which prompted the great Roman orator and lawyer, when he declares the legal enthusiasm with which he called to mind the sages and orators of antiquity, amidst the streets and groves of their native city.*

If this sort of enthusiasm were its only effect, legal biography might claim a place in the studies of law students, into whose pursuits despondence and fatigue are so apt to obtrude themselves. It appears too a very natural curiosity, to be inquisitive into the history, fortunes, reputation, and character of those who have imparted lustre to the profession of law, whose decisions or opinions have been handed down as worthy of a place in the body of the law, and in whose names we have a kind of interest and acquaintance, from their having so long been associated with our daily studies, besides that their history, connected as it sometimes is with the history of their own times, may shed light on the legal character, notions, and revolutions of their age. It may not, therefore, be unacceptable to add a list of such eminent lawyers, &c. as are worthy of a portion of the student's attention by this we by no means desire the student to search after the voluminous biographies of personages, whose lives can be usefully summed up in the extent of a few lines. In this department of his studies, the student must generally be content with biographical sketches or notices, which, if well written, will be found to contain, in most cases, all that is essential. These brief notices may be found in such works as Lemprière's

* *Cic. de Leg*

Universal Biography; Encyclopædia Britannica, Bayle's Dictionary, Encyclopædia Americana, Rees' Cyclopædia, Watt's Bibliotheca Britannica. Also in the various law journals and magazines, as in Hall's Law Journal, the English and American Jurist, the London Law Magazine, &c. Much useful matter, likewise, of this description, will be found in the work entitled Westminster Hall, 3 vols. 8vo London, 1825, in Parke's History of the Court of Chancery, and especially in the British and American Reviews of legal and other works. We hope to be excused in referring the student, also, to the first volume of the author's Legal Outlines, for a number of biographical notices of eminent legal characters, and *passim* throughout the present volumes. We may farther remark, that many of the volumes of reports, and some of the law treatises, are accompanied with similar sketches, which the student should not fail to read.

Legal biography in England, as well as in our country, has attracted, until very recently, but little attention. Some very respectable biographies, however, of British, Continental, and American jurists have appeared.

§ 1 BRITISH LEGAL BIOGRAPHY.

[The biography of British jurists is naturally that to which we should first resort, being not only a more ample field, but more illustrative of the history of the progress of our science, and richer and more varied in examples for imitation, & avoidance. In addition to the sources pointed out in our Notes on the tenth Title, in regard to the Civilians, we submit to the student the following selection on the subject of British legal biography. These, in common with most of the volumes of legal biography, are now brought to the student's view, not with the expectation that he will have time to read many of them during his novitiate, but that he may be early and fully cognizant of their existence, and that, in after seasons of occasional exemption from professional occupation, he may resort to them with the certainty of deriving from their pages valuable and pleasing instruction, which will serve to enforce and embellish the results of his severer studies.]

TABLE I

- 1 Burnet's Life of Lord Hale. New edition, 1774, 1 vol. 8vo.
- 2 Dodson's Life of Sir Michael Foster. London, 1811.
- 3 North's Life of Lord Keeper Guilford. 3d edit. London, 1819, 2 vols.
- 4 Mallet's Life of Lord Bacon. [Vide also Basil Montague's recent edition of Lord Bacon's works.]

- 5 Lord Henley's Life of Chancellor Henley, Earl of Northington
- 6 Hacket's Life of Lord Keeper Williams *
- 7 Halliday's Life of Lord Mansfield London, 1797, 1 vol 4to *Vide also 5 Law Magazine, p 71 to 120*
- 8 Lives of the Chancellors London, 1722, 2 vols 8vo
- 9 Prior, or Bissott's Life of Edmund Burke
- 10 Gifford's Life of William Pitt
- 11 Tomline's Memoirs of Pitt
- 12 Teighmouthe's Life of Sir William Jones, 1 vol 8vo 1804
- 13 Phillips' Recollections of Curran
- 14 Clitherow's Memoir of Sir William Blackstone
- 15 Biography of Sir William Blackstone [Anonymous London, 1782]
- 16 Cooke's Life of Lord Hardwick London, 1791, 4to
- 17 Roscoe's Lives of Eminent British Lawyers 1 vol 8vo 1829 [*Lives of Sir Edward Coke, John Selden, Sir Matthew Hale, Lord Guilford, Lord Jeffries, Lord Somers, Lord Mansfield, Sir G E Wilmot, Sir W Blackstone, Lord Ashburton, Lord Thurlow. Sir W Jones, Lord Erskine, Sir Samuel Romilly.*]
- 18 American Jurist [*In the first thirteen volumes of this work, will be found the lives of the following eminent British lawyers, judges, &c —Life and writings of Sir Wm Blackstone Life of Lord Radesdale, Mr Justice Burrow, Lord Lyndhurst, Lord Kenyon, Lord Hardwicke, Lord Brougham, Sir Samuel Romilly, Mr Dunning, (Lord Ashburton,) Sir Wm Elias Taunton, Sir Edw Sugden, Sir John Leach, Mr Saunders*]
- 19 London Law Magazine [*In this work will be found the following lives Lords Hardwicke, Mansfield, Northington, (Rob Henley,) Nottingham, Lord Keeper Williams, Charles Fearn, John Selden*]
- 20 Cooke's Life of Lord Somers London, 1791
- 21 Spirit of the Age Lon 1825, 1 vol 8vo [*Bentham, Mackintosh, Brougham, Lord Eldon*]
- 22 Singer's edition of Roper's Life of Sir Thomas More, 1822
- 23 Caley's Memoirs of Sir Thomas More, 1808, 2 vols 4to
- 24 Phillips' Life of Lord Keeper Williams London, 1700, 12mo
- 25 Life of Lord Clarendon, written by himself Oxford, 1759, fol also 3 vols 8vo
- 26 Maddock's Life and Writings of Lord Chancellor Somers, 1812
- 27 Life of Sir John Holt. London, 1764
- 28 Strictures on the Lives and Characters of the most eminent Lawyers of the present day London, 1790
- 29 Ridgway's Memoir of the Life of Sir Samuel Romilly, annexed to the collection of his Speeches.†
- 30 Memoirs of the Life of Sir James Mackintosh London, 1835 Philadelphia, 1835, 2 vols 8vo
- 31 Life of Sir Leoline Jenkins London, 1724
- 32 Biographia Britannica—*passim*

* *Vide also London Law Magazine, vol v 310 to 344*

† *Several of the foregoing are but meagre sketches, but still, will be read with interest, until more ample and worthy biographies shall appear*

TABLE II.

A List of the Lord Chancellors, Lord Keepers, Lord Commissioners of the Great Seal, Masters of the Rolls, and Vice Chancellors of Great Britain, with the dates of their respective appointments, from 1423 to 1835.

YEAR		
1423	Thomas, Bishop of Durham..	<i>Chancellor</i>
1424	Henry Beaufort, Bishop of Winchester	<i>Chan</i>
1426	John Kempe, Bishop of London	<i>Chan</i>
1430	Marmaduke Lumley, Bishop of Carlisle..	<i>Chan</i>
1432	John Stafford, Bishop of Bath..	<i>Chan.</i>
1433	John Frank, (Clerk,)....	<i>Chan pro tem</i>
1443	John Stafford, Cardinal	<i>Chan</i>
1444	William de Wainfleet, Bishop of Winchester.....	<i>Chan</i>
1450	John, Archbishop of York, and Cardinal	<i>Chan.</i>
1452	John Kemp, Cardinal.....	<i>Chan</i>
1454	Richard, Earl of Salisbury	<i>Chan.</i>
1455	Thomas Bouchier, Archbishop of Canterbury	<i>Chan</i>
1457	William Wickham, Bishop of Winchester.. .. .	<i>Chan</i>
—	Lawrence Booth, Bishop of Durham.	<i>Chan</i>
1460	George Nevil, Bishop of Exeter.....	<i>Chan</i>
1468	Robert Stullington, Bishop of Bath and Wells.....	<i>Chan</i>
1473	John Alcock, Bishop of Rochester..	<i>Keeper</i>
1474	Lawrence, Bishop of Durham.	<i>Chan</i>
1475	Thomas Rotheram, Bishop of Lincoln..	<i>Chan</i>
1478	John Morton, Bishop of Ely..	<i>Chan</i>
1484	John Russell, Bishop of Lincoln..	<i>Chan</i>
1485	Thomas Barrow.....	<i>Keeper</i>
1486	John Alcock, Bishop of Ely..	<i>Chan</i>
—	John Morton, Archbishop of Canterbury	<i>Chan</i>
1501	Henry Dean, Bishop of Salisbury.....	<i>Keeper</i>
1502	William Warham, Bishop of London, Aug 11th	<i>Chan</i>
1516	Thomas Wolsey, Cardinal, Archbishop of York, Dec 7th	<i>Chan</i>
1530	Sir Thomas More, Oct 25th	<i>Chan</i>
1533	Sir Thomas Audley, May 20th..	<i>Keeper and Chan</i>
1534	Thomas Goodricke, Bishop of Ely.....	<i>Chan</i>
1545	Thomas, Lord Wriothsley, May 3d..	<i>Chan and keep</i>
1547	Sir William Paulet, Lord St John, June 29th.. . . .	<i>Keeper</i>
—	Sir Richard Rich..	<i>Keeper</i>
—	Richard, Lord Rich, Nov 80th	<i>Chan</i>
1551	Thomas Goodricke, Bishop of Ely, Jan 19th.. . . .	<i>Chan</i>
1553	Stephen Gardner, Bishop of Winchester, Sept 21st . . .	<i>Chan</i>
1555	Nicholas Heath, Archbishop of York, Jan. 1st.. . . .	<i>Chan</i>

1557	Sir William Cordell, Nov 8th.	<i>Master of the Rolls</i>
1558	Sir Nicholas Bacon, Dec 22d	<i>Keeper</i>
1579	Thomas Bromley, Esq April 25th	<i>Chancellor</i>
1580	Sir Gilbert Gerrard, May 30th	<i>Master of the Rolls</i>
1587	Sir Christopher Hatton, April 29th	<i>Chan</i>
1591	Lord Hudson, } Lord Cobham, } Sept 20th Lord Buckhurst, }	<i>Lords Commissioners</i>
1592	Sir John Puckering, May 28th	<i>Keeper</i>
1593	Sir Thomas Egerton, April 10th.. . . .	<i>Master of the Rolls</i>
1596	Sir Thomas Egerton, May 6th.. . . .	<i>Keeper</i>
1603	Sir Thos Egerton created Baron of Ellesmere, July 24,	<i>Chan</i>
1603	Edward Bruce, Esq May 18th.	<i>Master of the Rolls</i>
1608	Sir Edward Phillips, Dec 2d	<i>Master of the Rolls</i>
1610	Sir Julius Cæsar, January 10th	<i>Master of the Rolls</i>
1616	Sir Francis Bacon, March 11th	<i>Keeper</i>
1617	Sir Francis Bacon, Lord Verulam	<i>Chan</i>
1620	Henry, Viscount Mandeville, } Ludovic, Duke of Richmond, } May 3d, . . . William, Earl of Pembroke, } Sir Julius Cæsar, }	<i>Lords Commissioners</i>
1621	John Williams, D D Bishop of Lincoln, July 10th	<i>Keeper</i>
1625	Sir Thomas Coventry, Sept 1st.... . . .	<i>Keeper</i>
1629	Sir Humphrey May, April 10th	<i>Master of the Rolls</i>
1630	Sir Dudley Digges, Nov 29th.	<i>Master of the Rolls</i>
1638	Charles Cæsar, Esq	<i>Master of the Rolls</i>
1639	Sir John Finch, Jan 23d	<i>Keeper</i>
1640	Sir Edward Littleton, Jan. 23d	<i>Keeper</i>
1641	John Williams, Bishop of Lincoln	<i>Chan</i>
1644	Sir John Culpepper, Jan 30th...	<i>Master of the Rolls</i>
1645	Sir Richard Lane, Aug 30th	<i>Keeper</i>
1645	Sir William Lenthall, Nov 22d	<i>Master of the Rolls</i>

INTERREGNUM

1645	Lord Manchester, } Lord Bollingbroke, } Mr Brown, } Mr St John, } Mr Wild, } Mr Prideaux, }	Commissioners, appointed by Parliament, during the Interregnum <i>August</i> , with the authority of Keepers, Royal Seals destroyed
1645	Mr Wandsworth, } Mr Beddingfield, } Mr Bradshaw, }	Commissioners appointed in <i>October</i> . A dispute between the Lords and Commons, resulted in placing the new Seals in the hands of the Earl of Kent, Ld Gray, Sir Thos Widdrington, Mr Whitelocke, Dr Bennet, and Mr Elkenhead
1648	Whitelock Keeble, Lisle.... . . .	<i>Commonwealth Commissioners</i>
1653	[Sir Edward Herbert, appointed Lord Keeper, 5 Charles, II — Exiled]	
1655	Colonel Fiennes and Mr Lisle.. . . .	<i>Protectorate Commissioners</i>

- 1659 [Sir Edward Hyde created Lord Chancellor, January 13th, and Earl of Clarendon, on 29th of same month, at Bruges, in Flanders, by Charles II and on the 29th May, 1660, accompanied the King in his public entry into London]
- 1659 Sir William Lenthall, May 14th..... *Keeper pro tem*
- 1659 Mr Bradshaw, Terry, Fountain, June 4th..... *Commissioners*

RESTORATION.

- 1660 Sir bottle Grimstone, Nov 3d *Master of the Rolls*
- 1667 Sir Orlando Bridgman, Dec 19th..... *Keeper*
- 1672 Anthony Lord Askev, Earl of Shaftesbury, Nov 21st *Chancellor*
- 1673 Sir Heneage Finch, Nov 17th *Keeper*
- 1675 Sir Heneage Finch, created Earl of Nottingham, November 9th.... *Chan*
- 1682 Sir Francis North, (afterwards Lord Guilford,) December 20th *Keeper*
- 1684 Sir John Churchill, Jan 12th..... *Master of the Rolls*
- 1685 George, Lord Jeffries, Sept. 28th *Chan*
- 1685 Sir John Trevor *Master of the Rolls*
- 1688 Sir John Maynard, }
Anthony Keck, Esq } February 28th *Lords Commissioners*
Sergeant Rawlinson, }
- 1689 Henry Powle, Esq March 13th.... *Master of the Rolls*
- 1690 Sir John Trevor, }
Sir Wm Rawlinson, } June 3d *Lords Commissioners*
Sir George Hutchins, }
- 1692 Sir John Trevor, Nov. 24th.... *Master of the Rolls*
- 1693 John Somers *Keeper*
- 1697 John Somers, created Lord Somers, March 29th.. *Chan*
- 1700 Sir John Holt, }
Sir Gorge Treby, } May 5th *Lords Commissioners*
Sir Edward Ward, }
- 1700 Sir Nathan Wright, May 21st.... *Keeper*
- 1705 William Cowper, Esq, Oct 2d... *Keeper*
1707. William, Lord Cowper, Dec 29th *Chan*
1710. Sir Thomas Trevor, }
Robt Tracy, Esq } Sept 26th... *Lords Commissioners*
John Scroop, Esq }
- 1710 Sir Simon Harcourt, (afterwards Lord Harcourt,) October 19th.... *Keeper*
- 1713 Simon, Lord Harcourt, April 13th *Chan*
- 1714 William, Lord Cowper, Sept 21st *Chan.*
- 1717 Sir Joseph Jekyll, Jan 24th *Master of the Rolls*
- 1718 Robt Tracy, Esq }
Sir John Pratt, } April 13th *Lords Commissioners*
Sir James Montague, }

1718	Thomas Lord Parker, Lord Macclesfield, April 18th	<i>Chancellor</i>
1725	Sir Joseph Jekyll, Jeffrey Gilbert, Esq } Sir Robt Raymond } January 7th...	<i>Lords Commissioners</i>
1725	Peter Lord King, June 1st	<i>Chan</i>
1733	Charles Lord Talbot, Nov 29th	<i>Chan</i>
1736	Philip Yorke, Lord Hardwicke, Feb 21st.	<i>Chan</i>
1738	Hon John Verney, Oct 9th	<i>Master of the Rolls</i>
1741	William Fortescue, Esq Nov 5th	<i>Master of the Rolls</i>
1750	Sir John Strange, Jan 11th...	<i>Master of the Rolls</i>
1751	Sir Thomas Clarke, May 29th	<i>Master of the Rolls</i>
1756	Sir John Willis, Sir Sydney S Smythe, } Sir John Eardley Wilmot, } November 24th	<i>Lords Commissioners</i>
1757	Sir Robt Henley, (afterwards Earl of Northampton), June 30th.	<i>Keeper</i>
1761	Sir Thomas Sewell, Dec 1th.	<i>Master of the Rolls</i>
1766	Charles Pratt, Lord Camden, July 16th	<i>Keeper</i>
1770	Charles Yorke, Esq (from the 17th to the 20th Jan)	<i>Keeper</i>
1770	Sir Richard Aston, Sir Sydney S Smythe, } Sir Henry Bathurst, }	<i>Lords Commissioners</i>
1771	Henry Lord Apsley, Earl Bathurst, Jan 22d	<i>Chan</i>
1778	Edward Lord Thurlow, June 3d	<i>Chan</i>
1783	Alexander Lord Loughborough, Sir William Henry Ashurst, Sir Beaumont Hotham, } April 8th	<i>Lords Commissioners</i>
1783	Edward Lord Thurlow, Dec 22d	<i>Chan</i>
1784	Sir Lloyd Kenyon	<i>Master of the Rolls</i>
1788	Sir Richard Pepper Arden, (afterward Lord Alvanley,)	<i>Master of the Rolls</i>
1792	Sir James Eyre, Sir Wm H Ashurst, } Sir John Wilson, } June 15th	<i>Lords Commissioners</i>
1793	Alex Widderburne, Ld Loughborough, Sept 28th	<i>Chan</i>
1801	Sir William Grant.	<i>Master of the Rolls</i>
1801	John Scott, Lord Eldon, April 14th	<i>Chan</i>
1806	Thomas, Lord Erskine, Feb 7th	<i>Chan</i>
1807	John, Lord Eldon, April 1st	<i>Chan</i>
1815	Sir Thomas Plumer	<i>Vice Chancellor</i>
1818	Sir John Leach.	<i>Vice Chancellor</i>
1818	Sir Thomas Plumer	<i>Master of the Rolls</i>
1821	Robert Lord Gifford.	<i>Master of the Rolls</i>
1826	Sir Joann Singleton Copley	<i>Master of the Rolls</i>
1827	Sir John Leach	<i>Master of the Rolls</i>
1827	Sir Anthony Hart	<i>Vice Chancellor</i>
1827	Sir Lancelot Shadwell.	<i>Vice Chancellor</i>

1827	Sir John Singleton Copley, Lord Lyndhurst, April 30th	..	Chancellor
1830	Henry Lord Brougham		Chan
1834	Lord Lyndhurst.		Chan
1835	In Commission		

SALARIES.

Lord High Chancellor,.....	£14,000	Vice Chancellor,	£6,000
Master of the Rolls,....	7,000		

TABLE III.

LIST of Chief Justices of the Court of King's Bench, from first of Edward III. 1327, to the reign of William IV and of the other Judges of that Court, from 1 George III. 1760, to the same time

EDWARD III		HENRY V	
1327	Geoffrey le Scrope [<i>Year Books</i> , Part 2d, 1327 to 1337]	1414	William Hankford
		HENRY VI	
1330	Robert de Malberthorpe	1424	William Cheyney [<i>Year Books</i> , Part 7th and 8th, 1424 to 1442]
1330	Henry le Scrope	1439	John Jayn
1331	Geoffrey le Scrope	1440	John Hody
1333	Richard de Wylughby	1442	John Fortescue
1334	Geoffrey le Scrope	EDWARD IV	
1331	Richard de Wylughby.	1462	John Markham [<i>Year Books</i> , Part 9th, 1462 to 1482]
1341.	Robert Parning	1462	Richard Choke
1341	William Scott [<i>Year Books</i> , Part 3d, 1343 to 1365]	1469	Thomas Billinge
1347	William de Thorpe	1482	Sir Wm Hussey [<i>Year Books</i> , Part 10th, <i>Longo Quinto</i> , 5th Edward IV]
1351	William de Sharesbull	HENRY VII	
1358	Thomas de Seaton	1496	John Fineux
1362.	Sir Henry Green	1503	Thomas Frowyk [<i>Year Books</i> , Part 11th Cases temp Edward V Rich III Henry VII Henry VIII *]
1366	John Knyvet [<i>Year Books</i> , Part 4th, 1366 to 1376]	HENRY VIII	
1373	John de Cavendish [<i>Year Book</i> , Part 5th, Pleas of the Crown]	1526	John Fitzjames.
RICHARD II		1539	Sir Edward Montague
1378	John de Cavendish	1546	Sir Richard Lyster
1382	Robert Tresilian	EDWARD VI	
1388	Walter de Clopton	1552	Sir Roger Cholmley
HENRY IV.			
1400.	Walter de Clopton		
1401	William Gascoigne [<i>Year Books</i> , Part 6th, 1410 to 1414.]		

* The *Year Books* omit cases in the reigns and years following—Edward III years 11 to 16, 19 to 20, and 31 to 37 Richard II the whole reign Henry V years 3, 4, 8 Henry VI years 5, 6, 13, 15, 16, 17, 23, 24, 25, 26, 29 Henry VII years 17, 18, 19. Henry VIII years 1 to 12, 15, 16, 17, 20 to 25, 29 to the end of the reign Cases of some of the omitted years are preserved in the Abridgments of Fitzherbert, Statham and Brooke

MARY		GEORGE I		
1553	Sir Thomas Bromley	1718	Sir John Pratt	
1554	Sir William Portman	1724	Sir Robert Raymond	
1556	Sir Edward Sanders	GEORGE II		
ELIZABETH		1733	Philip Yorke, (Lord Hardwicke)	
1559	Robert Catlin	1737	William Lee, esq	
1574	Christopher Wray	1754	Sir Dudley Ryder	
1592	Sir John Popham	1756	William Murray, (Lord Mansfield)	
JAMES I		GEORGE III		
1607	Thomas Flemming	1760	Lord Mansfield	
1613	Sir Edward Coke	Justice appointed at various times, from 1760 to 1797	Sir Thomas Dennison,	
1616	Sir Henry Montague		Sir Michael Foster,	
1620	James Ley		Sir J. E. Wilmot,	
1624	Sir Ranulph Crew		Sir Joseph Yates,	
CHARLES I			Sir Richard Aston,	
1626	Sir Nicholas Hyde		James Hewitt, esq	
1631	Sir Thomas Richardson		Edward Willes, esq	
1635	Sir Brampton		Sir William Blackstone,	
1643	Sir Robert Heath		Sir William Ashurst,	
1645	Henry Rolle.		Sir Francis Butler,	
CHARLES II			Sir Nash Grose,	
1655	John Glyn		1787	Lloyd Kenyon. (Lord Kenyon,) Chief Justice
1659	Richard Newdigate.	Sir Soulden Lawrence,		
	Robert Nicholas	Sir Simon Le Blanc } Justices		
RESTORATION		1802	Edward Law, (Lord Ellenborough,) Chief Justice	
1660	Sir Robert Foster	1818	Sir Charles Abbott (afterwards Lord Tenterden) Chief Justice	
1663	Sir Robert Hyde.	GEORGE IV		
1665	Sir John Kelynge	Justice appointed at various times, from 1830 to 1830	1820	Sir John Bayley,
1671	Sir Matthew Hale		Sir G. S. Holroyd,	
1676	Sir Richard Raynsford		Sir Wm Draper Best,	
1678	Sir William Scroggs		Sir Joseph Littledale,	
1681	Sir Francis Pemberton		Sir James Parke,	
1682	Sir Edmund Saunders		Sir W. F. Taunton,	
1683	Sir George Jeffreys	WILLIAM IV		
JAMES II		1830	Sir John Patteson	
1685	Sir Edward Herbert	1832	Sir Thomas Denman, Chief Justice	
1687	Sir Edward Wright			
WILLIAM AND MARY				
1689	Sir John Holt			
ANNE				
1709	Sir Thomas Parker			

Justices appointed at various times, from 1760 to 1787

Justices appointed at various times, from 1819 to 1830

SALARIES

Chief Justice,— £10,000 Associate Justice, £5,500

TABLE IV

LIST of Chief Justices of the Court of Common Pleas from 1701 to the present time.

1701	Sir Thomas Trevor	1793	Sir James Eyre
1714	Sir Peter King.	1799	John Scott, Lord Eldon
1725.	Sir Robert Eyre	1801	Richard P Arden, Lord Alvanley
1735	Sir Thomas Reeves	1804	Sir James Mansfield
1736	Sir John Willis	1814	Sir Vicary Gibbs
1762	Sir Charles Pratt, (afterward Lord Camden)	1818	Sir Robert Dallas
1766	Sir J E Wilmot	1824	Sir Robert Gifford
1771	Sir William de Grey	1824	Sir William Dru Dring
1780	Alexander, Lord Loughborough	1829	Sir N C Tindal

SALARIES.

Chief Justice.....	£8,000	Justices	£5,500
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TABLE V

A LIST of the most eminent legal characters of England, whose Biographies merit some attention

Abbot, Charles, Lord Tenterden	Brundell, Robert, C J C B
Alvaley, Richard Lord C J C B †	Brooke, Robert, C J C B
Aland, Sir John Fortescue*	Browne, Anthony, C J C B
Anderson, Edmund, C J C B	Brampton, Sir John, C J B R
Arden, Sir Richard P *	Buller, Sir Francis
Atkyns, Sir Robert*	Burnet, Sir Thomas, J C B
Bacon, Sir Francis	Butler, Charles
Bacon, Sir Nicholas	Cathin, Robert, C J B R
Babington, William, C J C B	Cavendish, John C J B R
Baldwin, John, C J C B	Cheney, William, C J B R
Banks, John, C J C B	Chomley, Roger, C J B R
Bedingfield, Henry, C J C B	Clopton, Walter, C J B R
Billinge, Thomas, C J B R †	Cooke, Sir John*
Blackstone, Sir William	Coke, Sir Edward, C J B R
Bracton, Henry de	Coventry, Thomas Lord
Britton, John	Comyns, Samuel
Bridgman, Sir Orlando, C J C B	Cottesmore, John, C J C B
Bromely, Thomas, C J B R	Cowper, Lord Chancellor
Brian, Thomas, C J C B	Cowell, Dr John

† Chief Justice of the Court of Common Pleas

‡ Chief Justice of the Court of King's Bench

All marked with * are mentioned by Mr Chalmers, in his valuable collection of opinions of eminent lawyers, and a biographical sketch of most of them given. Vide 1 vol Preface, p viii to lxx

- Crew, Sir Ralph C J B R
 Croke, Sir George
 Croke, Alexander
 Darby Robert, C J C B
 De Grey, William, C J C B
 Doddridge, Sir John
 Dunning, John, Lord Ashburton
 Dyer, Sir James, C J C B
 Eaton, (Dr John)*
 Ellesmere, Lord Chancellor
 Ellenborough, Edward, Lord, C J B R
 Eldon, John Lord, C J C B
 Ermeley, John, C J C B
 Erskine, James, Lord Alva
 Erskine, David, Lord Dun
 Erskine, Thomas, Lord Erskine
 Eyre, Robert, C J C B
 Fane, Francis*
 Fearne, Charles
 Fortescue, Sir John, C J B R Ld Ch
 Finch, John, C J C B
 Finch, Sir Heneage
 Fineux, John, C J B R
 Fitzjames, John, C J B R
 Fleming, Thomas, C J B R
 Foster, Sir Robert, C J B R
 Foster, Sir Michael
 Frowicke, Thomas, C J C B
 Gascoigne, William, C J B R
 Gawdy, Francis, C J C B
 Gibson, Edmund*
 Gilbert, Sir Jeffrey, L C Bar of the Ex
 Glanville, Renulf de
 Godolphin, Sidney
 Grant, Sir William
 Gratlan, Henry
 Greene, Henry, C J B R
 Grimestone, Sir Harbottle
 Hale, Sir Matthew, C J B R
 Hankford, William, C J C B
 Hargrave, Francis
 Hardwicke, Philip Yorke, E of
 Hardman, Humphrey*
 Harcourt, Sir Simon*
 Hawles, Sir John*
 Hay, Dr George*
 Heath, Robert, C J C B
 Hedges, Sir Charles*
 Henley, Sir Robert*
 Herbert, Edward, C J C B
 Hide, Sir Nicholas C J B R
 Hobart, Henry, C J C B
 Holt, Sir John, C J B R
 Hussey, William C J B R
 Hyde, Sir Robert, C J B R
 Jenkins, Sir Leoline
 Jeffreys, Sir George, C J B R
 Jones, Thomas, C J C B
 Jones, Sir William
 Juyn, John, C J B R
 Kelynge, Sir John, C J B R
 Kenyon, Lloyd, Ld C J B R
 Kames, Lord
 Kemp, William*
 Knyvet, John, C J B R
 King, Peter Lord, C J C B
 King, Sir John*
 Lee, Sir William, C J B R
 Leventz, Sir Creswell*
 Lev, James, C J B R
 Lister, Richard, C J B R
 Littleton, Edward, C J C B
 Littleton, Sir Thomas
 Lloyd, Sir Richard*
 Lloyd, Sir Nathaniel
 Loughborough Alexander, Ld Ld Chan
 Lutwyche, Sir Edward*
 Lutwyche, Thomas*
 MacDonald, Archibald*
 Mackintosh, Sir James
 Mansfield, William, Earl of C J B R
 Mansfield, Sir James, C J C B
 Marriot, Sir James*
 Markham, John, C J B R
 Maynard, Sergeant
 Montague, Edmund, C J B R
 Montague, Henry, C J B R
 Montague, Sir James*
 Morgan, Richard, C J C B
 Newton, Henry*
 Newton, Richard C J C B
 North, Francis, C J C B
 Northy, Sir Edward*
 Norton, Sir Fletcher*
 Norton, Richard, C J C B
 Norwich, Robert, C J C B

Nottingham, Lord Chancellor	Sharesall, William
Noy, Sir William	Showers, Sir Bartholemew*
Palmer, Sir Geoffrey	Somers, Sir John*
Parker, Sir Thomas, C J B R	Spelman, Sir Henry
Paul, Dr *	St German, Christopher
Pemberton, Sir Francis, C J B R	Strahan, Dr William*
Plowden, Edmund	Strange, Sir John
Plumer, Sir Thomas	Talbot, Lord Charles
Portman, William, C J B R	Thorton, Gilbert de
Popham, Sir John, C J B R	Thorpe, William, C J B R
Pollexfen, Henry, C J C B	Thurninge, William, C J C B
Pratt, Sir John, C J B R	Thurlow, Edward Lord
Pratt, Charles, C J C B (Afterwards Lord Camden)	Treshian, Robert, C J B
Prynne, William	Treby, George, C J C B
Prisot, John, C J C B	Trevor, Ld Thomas, C J C B
Raynsford, Sir Richard, C J B R	Vaughan, John, C J C B
Raymond, Sir Robert, C J B R (After- wards Lord Raymond)	Viner, Charles
Reeves, Thomas, C J C B	Ward, Sir Edward*
Rede, Robert, C J C B	Weary, Clement*
Richardson, Thomas, C J B R	Whitelock, Sir James
Rolle, Sir Henry	Wood, Robert*
Ronilly, Sir Samuel	Willes, Edward, J B R*
Ryder, Sir Dudley, C J B R*	Willes, John, C J C B
Saunders, Sir Edmund, C J B R	Wilmot, John Eardley, C J C B
Saunders, Edward, C J B R	Wray, Christopher, C J B R
Sawyer, Sir Robert*	Wright, Sir Edward, C J B R
Scroggs, Sir William, C J B R	Wynne, Sir William*
Seaton, Thomas, C J B R	Yorke, Sir Philip*
	Yorke, Charles*
	Zouch, Richard

§ 2. AMERICAN LEGAL BIOGRAPHY.

In addition to our preliminary remarks on legal biography in general, we would further prompt our student by no means to pass by even the meagre sketches which, with a few exceptions, are the only materials to be found in this department of our literature. The more we reflect on the beneficial tendency of well written biography, we are the more surprised that so little should have been accomplished to make us acquainted with those who have illustrated the paths of legal science. It is by no means the fact that the life of a lawyer is destitute of variety, and of scenes of great moral interest. On the con-

trary, were the chronicles of some lawyers, not merely of Britain's vast and wonderful metropolis, but even of our own quiet towns, brought to light, they would reveal tales of the most penetrating interest,—narratives of the richest variety, and details as full of the advantageous displays and vagaries of human nature, as are to be found in the same class among any other people whatever. Believing, as we do, that the lives of those occupied in the same, or in kindred pursuits with our own, must be full of salutary admonitions, stimulating us to honourable exertions and imitations, and equally to the avoidance of those causes of misfortune, which, though they may add greatly to the interest of the narrative, we desire never to realize in ourselves; we are unwilling yet to part with the subject, hoping to place its utility still more clearly in view. If the reader will turn to the commencement of this volume, he will there find that we have recommended the student to resolve not only on a scheme of *study*, but a scheme of *life*. The former we have endeavoured, in a large degree, to prepare for him, but of the latter he must in an equally large degree be his own architect. We have, indeed, given him some cardinal rules, even on this subject, in the 'Resolutions' to which we have referred, and also in the course of the volume, but he is to seek his lights chiefly in his own heart and understanding, and from the numerous examples, for weal and for woe, afforded him in the lives of others. A powerful auxiliary in attaining a scheme of life, than which nothing can be of greater utility, is the keeping with fidelity, a succinct diary, accompanied by monthly resolutions, and short reflections. Such a mirror of life would be not only of great practical, daily use to a professional man, but, in more matured age, might prove a source of pleasing reminiscence, and of salutary counsel. How great would be the charm in seeing thus faithfully reflected the details of a long and eventful life; the daily record of our own virtuous actions, and of our numerous temptations successfully resisted' and how powerfully would such chronicles appeal to us for amend-

ment, in case of actions of a contrary nature, especially in moments of more seasoned reflection, when the seductions of interest and the hilarity of existence have passed away, and the mind has become capable of acting under its own original honest impulses' But, if we have preserved no diary of our own life, how great is the interest, and beneficial the impulsive power derived from reading of the conduct of others in the exercise of great mental powers, even in departments of knowledge, and in pursuits the most alien to our own, and yet, how much more so in those, either the same, or german to them' It is nature, not education, which seems to have made this exercise of our faculties and sensibilities so highly pleasing. That principle of our nature which attracts us to any reflected image of human life, whether in the drama, in poetry, in history, or in particular vocations, needs not be referred to any more simple principle than emulation—the desire of imitation, or the hope to profit by example. These are, indeed, valuable fruits of this original sympathy; but they are by no means always, or even most frequently, the original prompting motives to our eager observation of human action, especially of the illustrious, the energetic, or the persevering. Many glow with admiration, who neither hope nor desire to emulate. Our sympathy then takes a much wider range than our own immediate concern in the action, or in the actor. Perhaps, indeed, the most universal sympathizers are such as are cut off from a life of action, and who yet find a source of intense enjoyment in surveying, as from a quiet corner in its theatre, the busy and changeful scene in which they would revolt from taking any part. But though this principle is inactive in many, further than as a source of interest and amendment; its existence, in some degree in every bosom, may be certainly referred to that wise purpose of Providence which, in the ordering of human life, points every passion to some useful end, and makes our very sympathies the source of utility and profit. This vague curiosity towards the business and bosoms of other men, which in that shape is but an

idle and innocent pastime, is often the germ of valuable fruits. Emulation may kindle from it, hope may be animated, and despondency relieved. We walk on cheerfully in company, while unassisted and solitary we should often droop. There is no one who, amidst the asperities of life, the difficulties of action, the perplexities of study, has not often felt his heart fail, and his hands fall, and had them as often lifted up by the communion of friendship, especially when occupied with the same pursuits, or by the opposite examples furnished in the biography of others. And even when no counsel can be given by friends, or illustrative examples be furnished from books, the sympathy of the former may be bestowed, whilst the latter may amuse,—and an hour of this sort of intercourse has often lightened the weight, which solitary brooding had only served to make heavier.

No doubt, therefore, the biography of illustrious persons, especially of our own profession, or even of our own country, may serve the happiest purposes of encouragement and instruction. As we naturally associate with the *living*, who are thus allied to us 'in business' and in arts, and, as the poet justly says, there is no heavier evil than to be

'Compell'd in business or in arts to drudge,
Without a second and without a judge,'

so we may as naturally turn to those still speaking records of the *dead* which biography furnishes, with much of the same sympathy, and with a great deal more instruction. There are not a few students of the legal profession whose lot it is to be born in an obscure neighbourhood, and to live among those whose general views of life, and whose aims of action are very limited and unaspiring. Now this may produce very unhappy effects, even on vigorous, and, in some degree, very self-dependent minds. For either it may subdue their aims and expectations to the general level which they find about them,—or it may leave them at least to that despondency to which we have referred as one of the most insidious foes to strenuous exertion. 'It is a great thing,' says Plutarch, 'to be born in a famous

city,' and so it certainly is in an especial degree, to such as are occupied with that kind of pursuits which require assistance, co-operation, and sustained emulation, to say nothing of the numerous other aids to knowledge, which concentrate in these populous assemblages of men. Doubtless this benefit of association among those engaged in kindred pursuits, gave a great part of their value to ancient schools, as those of Athens, and of Alexandria, in an age when printing had neither so greatly multiplied the manuals of learning, nor had substituted for this actual association that 'converse with the illustrious dead' which a man may now hold as it were, through the aid of books, without ever going out of his native village.

Biography at this day, by means of the press, collects for the most solitary reader, all the great subjects of her story, as it were, into one illustrious and universal school, in which the living and the dead,—those separated by time, and those by distance, are united for the contemplation and the imitation of the aspirant. Here every variety of genius may find a model, every variety of temperament take solace and courage; and the competitor in every course draw 'the inspiring breath' of emulation from his predecessors: hence competition is widened, so to speak, beyond the sphere of our immediate companionship; our views are expanded by seeing what has been attempted; and our hopes elevated by what has been accomplished, by so many sages and veterans in our particular pursuit. So likewise useful hints in the general order of our studies, practical examples of the value of method and perseverance; rules for the just conduct of professional life, may be collected in this academy of the venerable dead.

The sage ethical poet has said of the youthful student,

'Resistless burns the fever of renown,
Caught from the strong contagion of the gown;'

but stronger and deeper is the contagion caught from the contemplation of the models which biography exhibits of those whose example is especially inciting, as it transcends the usual level of life; and youth is particularly the season for its

study. Biography, with touches more distinct than those of history, and in more enlarged proportions than is consistent with the latter, cannot fail, at that tender age especially, to make the liveliest and most enduring impressions:

‘For if on youth’s untainted thought imprest,
The generous purpose still shall warm the manly breast’

If useful discoveries and inventions; increase of learning, the spread of religion, and the general melioration of society, concern us as abstract facts, they acquire additional interest when associated with a knowledge of the individuals to whom we are indebted for their introduction. Hence biography, in general, is a no less pleasing than useful study. It is history teaching by example, stimulating our ambition, and guiding our footsteps, and forcibly illustrating the means of improving various kinds of talent; pointing out the success of persevering industry directed by integrity, and the deference, honours, and influence accorded to enlightened genius.

As law is a growth well adapted to the American soil, our admiration of the progress of legal science among us is very natural, and should be accompanied with a desire of some acquaintance with its cultivators. It is, perhaps, not a rash assertion, that no country for the same population, ever produced in the space of an half century, as many deeply learned and scientific lawyers. The bar of nearly every state in the union, has been distinguished by more than one legal Hercules. Some of these luminaries have departed from us, leaving the brilliance of their fame for our contemplation; others, from their meridian height, now enlighten and warm us. Let the youths of the present day follow their paths; and as the setting horizon receives those now on the ascendant, may the culmination of those emerging from the dawn, be at least as splendid as that to which they have succeeded.

The lives of such eminent American jurists, as have been published, will no doubt be consulted with a national and professional interest. It were invidious to dwell on the many profound and accomplished judges and lawyers, who continue

to adorn the bench and bar of the Union, and of the States, as the student in the course of his studies will become familiar with their names and their fame.

We now present to the student some of the best specimens of American legal biography, (an extremely meagre list) and such other relative matters as may enlarge his acquaintance with the names at least, of those who have fashioned the system of American Law.

TABLE I.

LIVES of American Jurists.

- 1 Wheaton's Life, Writings and Speeches of Wm Pinkney *Baltimore*, 1826, 1 vol. 8vo
- 2 Wirt's Life of Patrick Henry, 1817.
- 3 Life of William Wirt *Baltimore*, 1832
- 4 Life of Fisher Ames, 1809, 1 vol. 8vo
- 5 Bowen's Memoir of Tristram Burgess *Philadelphia*, 1835
- 6 Knapp's Biographical Sketches of Eminent Lawyers and Statesmen *Boston*, 1821, 1 vol. 8vo—viz ✓
 [Parsons, Sumner, Warren, Green, Eliot, Mather, Knapp, Byles, Adams, Kilby, Osborn, Church, Orne, Allen, Read, Pratt, Lathrop, Gridley, Sewall, Hovey, West, Cooke, Sullivan, Dalton, Otis, Leonard, Ruggles, Sprague, Cushing, Hammond, Washburn, Hodge.]
- 7 American Jurist [Bushrod Washington, Thomas Addis Emmet, George Bliss, Robert Trumble, Nathan Dane, William Wirt, &c]
- 8 Prentice's Life of Henry Clay, 1832
- 9 Life of Daniel Webster, 1835
- 10 Holland's Life of Martin Van Buren, 1835
- 11 Learned's Life of Hugh L. White, 1835.

TABLE II

LIST of the Judges of the Supreme Court of the United States, with the date of their Commissions, from the organization of the Court, to the present time

- 1 JOHN JAY, of N York, [born Dec 1, 1745, died May 17, 1829] Chief Justice, Appointed Sept 26th, 1789
- 2 WILLIAM CUSHING, of Massachusetts, [born March 1733, died Sept 13, 1810] Associate, Sept. 27th, 1789.
- 3 JAMES WILSON, of Pennsylvania, [born in Scotland, 1742, died Aug 1798] Associate, Sept 29th, 1789

- 4 JOHN BLAIR, of Virginia, [born 1732, died Aug 1800] *Associate*, Sept 30, 1789
- 5 JAMES IREDELL, of North Carolina, [born — died Oct 1799] *Associate*, February 10th, 1790
- 6 THOMAS JOHNSON, of Maryland, [born 1732, died Oct 19th, 1819] *Associate*, November 7th, 1791
- 7 WILLIAM PATERSON, of N Jersey, [born 1711, died Sept 9th, 1806] *Associate*, March 4th, 1793 (In the place of Mr Justice Johnson, *resigned*)
- 8 JOHN RUTLEDGE, of S Carolina, [born in Ireland, — died July, 1809] *CHIEF JUSTICE*, July 1st, 1795 (In the place of Mr C J Jay, *resigned*)
- 9 SAMUEL CHASE, of Maryland, [born April 17th, 1741, died June 19th, 1811] *Associate*, January 27th, 1796 (In the place of Mr Justice Blair, *resigned*)
- 10 OLIVER ELLSWORTH, of Connecticut, [born April 3d, 1745, died Nov 26, 1807] *CHIEF JUSTICE*, March 4, 1796 (Appointed in the place of Mr C J Rutledge, *resigned*)
- 11 BUSHROD WASHINGTON, of Virginia, [born 1759, died at Philadelphia, Nov 26, 1829] *Associate*, Dec 20, 1798 (In the place of Mr Justice Wilson, *deceased*)
- 12 ALFRED MOORE, of North Carolina, [born 1755, died Oct 15, 1810] *Associate*, Dec 10, 1799 (In the place of Mr Justice Iredell, *deceased*.)
- 13 JOHN MARSHALL, of Virginia, [born Sept 24th, 1755, died at Philadelphia, July 6th, 1835] *CHIEF JUSTICE*, Jan 31, 1801 (In the place of Mr C J Ellsworth, *resigned*)
- 14 WILLIAM JOHNSON, of S Carolina, [born 1763, died at Brooklyn, L. I Aug 4, 1834] *Associate*, March 6, 1804 (In the place of Mr Just Moore, *resigned*)
- 15 BROCKHOLST LIVINGSTON, of N York, [born Nov 25th, 1757, died at Washington, March 18th, 1823] *Associate*, Nov 10, 1806 (In the place of Mr Justice Paterson, *deceased*)
- 16 THOMAS TODD, of Kentucky, [died January, 1826] *Associate*, March 3, 1807 (Appointed under the act of Congress, Feb 1807, providing for an additional Justice)
- 17 GABRIEL DUVAL, of Maryland, *resigned* Dec 1834 *Associate*, Nov 18, 1811 (In the place of Mr Justice Chase, *deceased*)
- 18 JOSEPH STORY, of Massachusetts *Associate*, Nov 18, 1811 (In the place of Mr Justice Cushing, *deceased*)
- 19 SMITH THOMPSON, of N York *Associate*, Dec 9, 1823 (In the place of Mr Justice Livingston, *deceased*)
- 20 ROBERT TRIMBLE, of Kentucky, [born 1777, died Sept 1828] *Associate*, May 9, 1826 (In the place of Mr Justice Todd, *deceased*)
- 21 JOHN MCLEAN, of Ohio *Associate*, March, 1829 (In the place of Mr Justice Trimble, *deceased*)
- 22 HENRY BALDWIN, of Pennsylvania *Associate*, January, 1830 (In the place of Mr Justice Washington, *deceased*)
- 23 JAMES M WAYNE, of Georgia *Associate*, Dec 1835 (In the place of Mr Justice Johnson, *deceased*)

SALARIES — Chief Justice, \$5,000 — Associates, \$4,500 — Attorney General, \$4,000 Reporter, \$1,000, and emoluments from the sale of his volumes

TABLE III

LIST of American Lawyers, whose biography merits some attention *

- ADAMS, (Andrew) *Connecticut* Died November, 1797, aged 61
- ADAMS, (John) second President of the United States, born October 30, 1735, died 4th July, 1826
- ADDISON, (Alexander) *Pennsylvania* Judge, Reporter, died November 24, 1807, aged 48
- ALLEN, (William) Chief Justice of *Pennsylvania*, appointed 1750, died 1780
- AMES, (Fisher) *Dedham, Mass* born 9th April, 1758, died 4th July, 1808
- ATKINSON, (Theodore) Chief Justice of *New Hampshire*, died 1779
- BAYARD, (James A.) *Philadelphia*, 1767, died August, 1815
- BIGELOW, (Timothy) *Worcester, Massachusetts* born 30th April, 1767, died 18th May, 1821
- BLAIR, (John) Associate Justice of the Supreme Court of the United States died August 1800, aged 68
- BRACKENRIDGE, (Hugh Henry) a Judge of the Supreme Court of *Pennsylvania* born 1749, died 1816
- BRACKENRIDGE, (John) Attorney General of the United States died 1806
- BRADFORD, (William) Attorney General of the United States born at *Philadelphia*, 14th September, 1755, died 23d August, 1795
- BREARLEY, (David) Chief Justice of *New Jersey*, 1763 died August, 1790
- BRYAN, (George) Judge of the Supreme Court of *Pennsylvania* appointed 1780, died January 28, 1791
- BURKE, (Aedanus) Judge of the Supreme Court of *South Carolina* died 30th March, 1802, aged 59
- BYFIELD, (Nathaniel) Judge of the Vice Admiralty born 1653, died at *Boston*, 1733
- CHAPMAN, (Asa) Judge of the Supreme Court of *Connecticut* died 1825
- CHASE, (Samuel) of *Maryland*, Associate Justice of the Supreme Court of the United States born April 17, 1741, died June 19, 1811
- CHAUNCEY, (Charles) Judge of the Supreme Court of *Connecticut*. died 1823
- CHEW, (Samuel) Chief Justice of *Pennsylvania* died 1744
- CHEW, (Benjamin) Chief Justice of *Pennsylvania*. died 1810, aged 87
- CUSHING, (William) Associate Justice of the Supreme Court of the United States *Massachusetts*, born March, 1733, died 13th September, 1810

* The following list is, of course, extremely imperfect, and presents a meagre catalogue of the eminent lawyers of our country; as our limits, and the object itself of the enumeration, equally exclude one that would be complete, and this is offered that it may give the student the first means and impulse of inquiring into the much neglected subject of American legal biography

- DALLAS, (Alex James) an eminent lawyer of Philadelphia appointed October, 1811, Secretary of the Treasury of the United States, born in the Island of Jamaica, 1759, died 16th January, 1817, aged 57
- DANA, (Francis) Chief Justice of Massachusetts born Aug 1742, died April 25, 1811
- DAWES, (Thomas) Judge of the Supreme Court of Massachusetts born 1757, died 12th July, 1825
- DE LANCEY, (James) Chief Justice and Lieutenant Governor of New York born 1703, died August 2, 1760
- DEXTER, (Samuel) Massachusetts born 1761, died 4th May, 1816, aged 54
- DRAYTON, (William) South Carolina Judge of the District Court of the United States, born 1733, died 1790.
- DUANE, (James) appointed Judge of the District Court of the United States, New York, October, 1789, died 1797
- DUDLEY, (Paul) Chief Justice of Massachusetts born 3d September, 1675, died 21st January, 1751.
- DULANY, (Daniel) A most learned Counsellor, Maryland, Secretary, and one of the Council of that Province, born about 1680, died 1770
- DULANY, (Daniel,) an eminent lawyer, born at Annapolis, Maryland, about the year 1715, died at Baltimore, 1797
- DUEP, (Eliphalet) Chief Justice, S C Connecticut, died May 13, 1807, aged 86
- DANE, (Nathan) A learned lawyer of Massachusetts, author of the Abridgment of American Law, established the Dane professorship of Law in the Harvard University, 1830—born at Ipswich, Dec 29, 1752, died Feb 15, 1835
- ELLSWORTH, (Oliver) Chief Justice United States, born at Windsor, Connecticut, April 29, 1745, died Nov 26, 1807, aged 65
- EMMET, (Thomas Addis) born, Cork, Ireland, 1764, emigrated to New York, Nov 11, 1804, died Nov. 14, 1827, aged 63
- FAY, (David) Judge S C Vermont, died June, 1827, aged 66
- GALLISON, (John) Lawyer, Reporter, born Oct 1783, died at Boston, Dec 25, 1820
- GRIFFITH, (William) Author of the Law Register, born at Rahway, N Jersey, March 26th, 1766, died at Burlington, June 7th, 1826
- GRIMKE, (John F) Judge S C. S Caro died, 1819
- HANCOCK, (John) born at Quincy, near Boston, 1737, died Oct 8th, 1793, aged 56
- HAMILTON, (Alex) born at Nevis Island, (W. I) 1757, emigrated to New York in 1773, died July 12, 1804, aged 47
- HAMILTON, (Andrew) Philadelphia, died August 4, 1741
- HANSON, (Alexander Contee) son of John Hanson, President of the Continental Congress—was born near Port Tobacco, Maryland, Nov 2, 1749 Appointed Chancellor, Oct. 3, 1789, died at Annapolis January, 16, 1806

HANSON, (Alexander Contee) third son of the preceding—lawyer, patriot and statesman, born at Annapolis, Feb 27, 1786, died at Belmont, near Baltimore, in May, 1819

HARPER, (Robert Goodloe) a distinguished lawyer and statesman, born near Fredericksburg, Virginia, 1765, died at Baltimore, January 15, 1825

HAWLEY, (Joseph) Northampton, Mass born 1724, died March 10, 1788

HAY, (George) Judge U S. C Eastern District, Virginia, died Sept 18, 1830

HENNING, (William) Chief Justice Court of Appeals, Virg died Feb. 1824, aged 59

HENNING, (William) Reporter, Richmond, Virginia, died March 31, 1828

HILLHOUSE, (William) Judge C. C Pleas, and of Probate, Connecticut, born 1727, died June 12, 1816

HILLHOUSE, (James A) brother of the above, born at New London, 1729, died Oct 1775

HOBART, (John) Judge District C N York, died Feb 1805

HOPKINSON, (Francis) Judge District C U S for Pennsylvania, born 1738, died May 9, 1791.

HOWELL, (David) born in N Jersey, 1747, Professor of Law in Rhode Island, Judge of District Court of that state from 1812, till his death, July 29, 1824

INGERSOLL, (Jared) Adm Judge, Middle District, Connecticut, born at Milford, 1722, died, August, 1781

INGERSOLL, (Jared) son of the preceding—an eminent lawyer of Philadelphia, born, 1749, died October, 1822

INGERSOLL, (Jonathan) eminent lawyer of New Haven, died Jan 12, 1823

IREDELL, (James) N Carolina, Associate Justice, S. C U States, died Oct 1799

JAY, (John) Chief Justice U States, born at New York, Dec 12, 1745, died May 17, 1829, aged 84

JEFFERSON, (Thomas) third President of the United States, born at Shadwell, near Monticello, April 2, 1743, died July 4, 1826, aged 83

JOHNSON, (William) S Carolina, Asst Jus S C U. States, born — died —.

KILLEN, (William) Chief Justice, afterwards Chancellor of Delaware, died Oct. 3, 1805, aged 83

KING, (Rufus) born in Maine, 1755, removed to New York, in 1788, died April 29, 1827, aged 72

KINSEY, (James) Chief Justice, New Jersey, died Jan 4, 1802, aged 69.

KEY, (Philip Barton) of Maryland, an eloquent and able lawyer, born April 13, 1757, at Charlestown, Cecil county, died July 28, 1815

KIRBY, (Ephraim) first Judge of the District Court U States, N York, and the first Reporter of judicial decisions in this country. [Cases in the S C of Connecticut, 1789, 1 vol]

KEMP, (William) barrister-at-law, Att Gen of N York, died 1793

LAW, (Richard) Chief Justice of Connecticut, born March 17, 1733, District Judge U States, 1789, died Jan 26, 1806

LEE, (Charles) Virginia, Att Gen U States, Dec 10, 1793, died June 1815 aged 58

LINCOLN, (Levi) Massachusetts, Att Gen U States, appointed May 3, 1801, died April 11, 1820, aged 71

LIVERMORI, (Samuel) Chief Justice N Hampshire, born 1732, died Mar, 1804

LIVERMORE, (Samuel) of Massachusetts, emigrated to N Orleans. Author of several legal works of merit, and distinguished as a civilian, bequeathed his law library to Harvard University, died 1831

LIVINGSTON, (Robert R) Chancellor of N York, born Nov 27, 1746, died Feb 26, 1813.

LIVINGSTON, (Brockholst) Associate Justice S C U States, born in N York, Nov 25, 1757, died at Washington, March 18, 1823, aged 65

LOWELL, (John) Massachusetts, District Judge U States in 1789, died May 6, 1802, aged 59

MADE, (Benjamin) Chief Justice of Massachusetts, born at Salem, 1666, died March, 1745, aged 79

MARTIN, (Luther) born in New Jersey, removed to the Eastern Shore, Maryland, taught school and studied law, appointed Attorney General, Feb 1778, became one of the most learned jurists of the U States, died at New York, at an advanced age, in poverty

McKEAN, (Thomas) Chief Justice of Pennsylvania for twenty-two years, and Governor nine years—member of Congress eight years from Delaware, whilst C J of P one of the signers of the Declaration of Independence, born March 19, 1731, died, June 24, 1817, aged 83

MONROE, (James) fifth President of the U States, born in Westmoreland county, Virginia, April 28, 1758, died July 4, 1830, aged 72

MOORE, (Alfred) of N Carolina, Associate Justice of the U States, died Oct 15, 1810

MORRIS, (Robert Hunter) Chief Justice of New Jersey, died Feb 20, 1764

MURRAY, (Wm Vans) of Maryland, born 1762, died Dec 11, 1813

MARSHALL, (John) born in Fauquier county, Virginia, Sept 24, 1755. Appointed June 7, 1797, (with General Pinkney, and Elbridge Gerry) Envoy Extraordinary, to the Court of France, in December, 1799, took his seat in Congress—May, 1800, appointed Secretary of War January 31, 1801, Chief Justice of the U States, in which station he continued to confer lasting honours on his name and country—till his death at Philadelphia, July 6th, 1835

OLIVER, (Peter) Chief Justice of Massachusetts, born 1713, died 1791

ORIS, (James) of Massachusetts, born Feb 5, 1725, died by lightning, May 21, 1781

PACA, (William) Chief Justice of Maryland, from 1778 to 1781. Chief Justice of the Court of Appeals in Admiralty causes. Appointed in 1799 Judge of the District Court of the United States, died, 1799

PAINE, (Robert Treat) a Judge of the Supreme Court of Massachusetts, from 1799 to 1804, died May 11, 1814, aged 84

PARKER, (Isaac) Chief Justice of Massachusetts, born 1768, died May 26, 1830

PARSONS (Theophilus) Chief Justice of Massachusetts, a most learned lawyer, born Feb 24, 1750, died Oct 30, 1813

PATTERSON, (William) of N J Ass Jus of the S C U States, died Sept 9, 1806

PENDLETON, (Edmund) first Judge of the Virginia Chancery Court, in 1779—Chief Justice of the Court of Appeals—Judge of the District Court of the U States, died, 1789

PETERS, (Richard) Judge of the District Court U. States, Pennsylvania, born June, 1744, died August 21, 1828, aged 84

PINKNEY, (William) a most learned, and eloquent lawyer, born at Annapolis, Maryland, March 17, 1764, died at Washington Feb 25, 1822, aged 57

PRATT, (Benj) Chief Justice of N York, born at Boston, 1709, died Jan 1763

QUINCY, (Josiah) of Massachusetts, an eminent lawyer and patriot, born Feb. 23, 1744, died April 26, 1775.

RANDOLPH, (Edmund) of Virginia, Att Gen of the U States, 1790, died Sept 1813

READ, (George) Chief Justice of Delaware, born in Maryland, 1734, died, 1798

REEVE, (Tapping) Chief Justice of Connecticut, born Oct 1744, died Dec 1823

ROANE, (Spencer) of Virg an eminent judge, born April 4, 1762, died Sept 4, 1822

ROBINSON, (Jonathan) Chief Justice of Vermont, died 1819, aged 60.

ROOT, (Jesse) Chief Justice of Connecticut, born Jan 1737, died March 29, 1822, aged 85

RUTLEDGE, (John) of South Carolina, Chief Justice of the U States, 1796 In 1784 Chancellor, in 1791, C J. S Carolina, died July, 1800

SMITH, (William) barrister of Province of New York, died Chief Justice of Quebec

SARGEANT, (Nathaniel) Chief Justice of the Supreme Court of Massachusetts, died (Oct. 1791, aged 60

SEDGWICK, (Theodore) born May 1746, Judge of the Supreme Court of Massachusetts, from 1802, till his death, January 24, 1813

SEWALL, (David) of Massachusetts, Judge of the Supreme Court of Massachusetts, 1777 District Judge of the U. States, 1789.

SEWALL, (Samuel) Chief Justice of Massachusetts, born Dec. 11, 1757, died June 8, 1814

SHIPPEN, (Edward) Chief Justice of Pennsylvania, died April 15, 1807, aged 77

SWIFT, (Zephaniah) Chief Justice of Connecticut, born in Massachusetts, Feb 1759, died Sept 27, 1823

TILGHMAN, (William) Chief Justice of Pennsylvania, born Aug 12, 1756, in TALBOT county, Maryland, died April 30, 1827

- TUCKER**, (St George) of Virginia, Judge of the state, and appointed District Judge of the U States, 1813, died, Nov 1827
- VAN NESS**, (William) a Judge of the Supreme Court of N York, from 1807, till May 1822, when he resigned, and resumed practice, died Feb 28, 1823, aged 47
- WALKER**, (Robert) Judge of the Supreme Court of Connecticut, from 1760, till his death in 1772
- WALKER**, (William) a Judge in Massachusetts, died Nov 1831, aged 80
- WALLY**, (John) a Judge of the Supreme Court of Massachusetts, died 1712
- WASHINGTON**, (Bushrod) Associate Justice of the Supreme Court of the U States, born in Virginia, 1759, died at Philadelphia, Nov 26, 1829, aged 70.
- WILSON**, (James) born in Scotland in 1742, emigrated to Philadelphia in 1766, a Judge of the Supreme Court of the U States in 1789 Professor of Law in the University of Pennsylvania, died Aug 28, 1798, aged 56
- WINCHESTER**, (James) a most eminent lawyer, Judge of the District Court of the U States, born at Westminster, Frederick county, Maryland, Sept 13, 1772, died April 5, 1806
- WINDER**, (Wm H) an eminent lawyer, born in Somerset county, Maryland In the war of 1812, he abandoned an extensive practice in Baltimore—joined the Army, became Brigadier General, commanded in Canada, at Bladensburg, and at Baltimore, died May 24, 1824, aged 53—deeply lamented
- WINTHROP**, (James) Chief Justice, C C P of Massachusetts, died Sept 1821, aged 70
- WALCOTT**, (Erastus) a Judge of the Supreme Court of Connecticut, born 1723, died Sept 24, 1793
- WYTHE**, (George) Chancellor of Virginia, born 1726, died June 8, 1806, aged 80
- WIRT**, (William) a distinguished lawyer and orator, author of the *British Spy*, *Life of Patrick Henry*, *Old Bachelor*, &c born near Bladensburg, Maryland, Nov 8, 1772, died at Washington, Feb 18, 1834, universally lamented
- YATES**, (Robert) Chief Justice of New York, born at Schenectady, Jan 1738, died Sept 9, 1801.
- YATES**, (Jasper) of Pennsylvania, Judge and Reporter of the decisions of the Supreme Court of that state, from 1791, till his death, March 14, 1807

§ 3. CONTINENTAL LEGAL BIOGRAPHY.

[§ The names of nearly all the eminent Continental Jurists, with the titles of their respective works, have been stated in several of the previous Titles of this work * Legal biography has been much more attended to on the continent than elsewhere We have already indicated some of its various sources, and in addition subjoin the following tables]

TABLE I.

SOURCES of Continental Legal Biography.

ADAMUS *Vitæ Germanorum Jurisconsultorum et Politicorum Francof 1705*

BERNARDI *Eloge de Cujas Paris, 1770*

BERRIAT SAINT-PRIX *Vie de Cujas—Voy Hist du Droit Romain Paris, 1821, p 373*

[See also *Thèmes*, vol 1 p 297 In these volumes will be found some interesting, though brief biographical notices, the following are the principal

VOL 1 Cujas, p 94 Clossius of Tübingen, p 400 —Prof Boulage, p 476

VOL 2 Fournel, p 181 Vol 4 Tarble, p 380 Delahaye, p 380

VOL 5 Millelot, par M Hennequin, p 48

VOL 6 Prof Haubold of Leipsic Vol 7 Waggeman, p 434 Prof Kemper, p 344 Bigot, p 394 Grappe, p 396

VOL 8 Jourdan, par M du Caurroy, p 151 Cotelle, p 209 Legrand, p 210

[§ In these volumes may also be found the names of most of the distinguished lawyers, who within the last forty years have received the Doctorate from the Faculty of Law, at Paris, with the date of each]

BUTLER *Memoir of the Life of Henry Francis d'Aguesseau, Chancellor of France, London, 1830* [§ Vide also the Notices and Eulogies of this eminent legist, by *Brunet*, 1760, by M le Comte de *Segur*, 1822, and by M d'Aguesseau de Frème, 1778—new edition, 1812.

BURIGNY *Vie de Grotius. Paris, 1757, 2 vols 12mo*

BROPEAU *La Vie de Charles Dumoulin. Paris, 1654*

DUFERY *Vie de Michel l'Hopital, placée au commencement des Œuvres de l'Hopital Paris, 1824* [§ See also the Notices by *Bernard*, 1807, by the *Abbe Reiny*, 1777, by M *Montard*, 1778, and by M *Levesque*, 1764

DUPAC, (Abbé) *Vie de Van Espen Louvain, 1767, 8vo*

LECHNERIS *Collectio Veterum Clarissimorum Jurisconsultorum Lipsiæ, 1686, 8vo*

NETTELBLADT *Life of Francis Duaren, translated into Latin by C S Zeidlero Iucca, 1768, 8vo*

SERRA *De Vita et Scriptis Joh:an Vine Gravine Roma, 1758, 4to*

* Vide ante p 340, &c 370, 431 &c 454, &c 473, &c 486 to 500, 544, &c 579, &c

STRAUCHIUS. *Vitæ aliquot veterum Jurisconsultorum Jenæ, 1728, 8vo*

TAISAND. *Les Vies des plus célèbres jurisconsultes de toutes les nations, tant anciens que modernes Paris, 1737, 4to*

TERRASSON. *Vies et ouvrages de ceux des jurisconsultes français, qui ont écrit sur le droit Romain—dans son Histoire de la Jurisprudence Toulouse, 1824, 4to*
p 595

[The lives of many of the distinguished continental jurists also appear in the form of Eulogies, short notices, &c. often affixed to their works, and sometimes published separately, or inserted in the works of others. Among these we may mention the following *Eloge de M. Pothier, par de Bièrre, avec un catalogue de ses Ouvrages, 1772*. Also by M. Breton, 1773—by M. le Trosne—by M. Desportes, 1823—by M. Dupin, annexed to his edition of Pothier's works, in 1824.—also by Caleb Cushing, esq. annexed to his translation from M. Pothier, *Boston, 1821*. *Eloge de Montesquieu par d'Alembert—by Solignac, Nancy, 1756, 4to*—by Maupertius, 1755, 8vo. *Eloge historique de J. G. Hermeccius, avec le catalogue de ses ouvrages*. See Dupin's edition of his *Recitations, Paris, 1810*. *Notice sur M. Gautier, par M. Dupin, Paris, 1829*. *Notice historique sur la vie et les ouvrages de M. Henrion de Pansey, premier président de la Cour de Cassation, par M. Rozet Paris, 1829*

TABLE II.

A LIST of writers on the Civil Law, the Maritime Law, Law of Nations, &c. (of the Continent) whose biographies merit some attention.*

Aldatus, (And)	Baldus, (Ubal)
Augustinus, (Anto)	Boxhorno, (Marcus Zucrius)
Ayliffe, (John)	Berthelot, (J. F.)
Accausius, (B.) [†]	Boyerus, (G.)
Aguesseau, (Henry Francis d')	Biener, (C. G.)
Abreu, (Jos. Ant. d')	Boucher, (P. B. and A. G.)
Aitzema, (Leo)	Benecke, (William)
Altequera, (Ant. D.)	Coccius, (Hen.)
Averanus, (J.)	Coccius, (Sam.)
Azuni, (D. A.)	Cujacius, (Jacobus)
Bynkershoek, (Cornelius Van)	Contius, (Ant.)
Budæus, (Gul.)	Cunæus, (Gali.)
Barbeyrac, (J.)	Cleviac, (Step.)
Bachovius, (Reinh.)	Casaregis, (J. L. Marin de)
Brissonius, (Barna.)	Calvinus, (J.)
Bolaños, (Juan de Hevia)	Corvinus, (Arn.)
Baldunus, (Franciscus)	Crusius, (J. A.)

* The following is by no means intended as a complete list, of the eminent jurists of the continent, for reasons similar to those assigned ante note *, p 642, vide also ante p 473, &c. 486, &c.

- Capmany, (Antonio de)
 Donellus, (Heug)
 Duarens, (Fran)
 Dupin, (anc) (Jeune) (Charles) (le baron)
 Dumoulin, (Charles)
 Dumont, (George)
 Emerigon, (Balt Marie)
 Everhardus, (Nicholas)
 Eutropius, (Flavius)
 Edzard, (J H)
 Eisenhardt, (J F)
 Engelbrecht, (Joh Andr)
 Freer, (Marquardus)
 Fabrot, (Charles Annibal)
 Ferriere, (Claude Joseph de)
 Filangieri, (Gaetano)
 Faber, (Pand A)
 Grotius, (Hugo)
 Galiani, (Ferdinando)
 Godefroi, (James)
 Godefroi, (Theodore)
 Godefroi, (Denys)
 Granswinckel, (Theodore)
 Gravina, (John Vincent)
 Gronovius, (John Frederick)
 Gentilis, (Albericus)
 Hommelius, (Car Ferd)
 Huberus, (Ulric)
 Hugo, (Gust)
 Hottomanus, (Fr.)
 Heineccius, (J. Gotl)
 Hopital, (Mich de P)
 Hoppius, (Joachim)
 Huet, (P D)
 Hulot, (Hen)
 Hubner, (Martin)
 Imola, (Johannes)
 Kuricko, (Reinoldus)
 Kocchius, (Jos Char)
 Loccenius, (Joh)
 Leunclavius, (Joh)
 Lampridi, (Gio)
 Leibnitz, (William Godfrey)
 Labittus, (J)
 Leyserus, (Aug)
 Luzac, (Elie)
 Ludovicus, (Frid)
 Lindenbrogius, (Frid)
 Morisot, (Claude Bartholomeu)
 Mornac, (Anthony)
 Monochius, (Jac)
 Maio, (Angelo)
 Merlin, (Philip Antony) *de Douai*
 Meerman, (G)
 Mascovius, (G)
 Noodt, (Gerardus)
 Nettelblatt, (Daniel)
 Ompteda, (Henry Lewis Baron Von)
 Odofredus, (Beneventatus)
 Otto, (Everardus)
 Pothior, (R. I)
 Puffendorf, (Samuel)
 Perczius, (Anthony)
 Pithon, (Peter and Francis)
 Putmannus, (J H and J L)
 Pancirolus, (Guid)
 Pacius, (Julius)
 Pardessus, (J M)
 Peckius, (Peter)
 Peuchet, (Jaques)
 Pontanus, (Isaac)
 Postoret (M de)
 Roccas, (Francis)
 Ranucci,
 Rosinus,
 Ritterahusius, (Conrad)
 Russardus, (L)
 Rayneval, (Gérard de)
 Ranchinus, (Stephen)
 Savigne, (Carl Von)
 Stockmans, (Peter)
 Struvius, (B G and G A)
 Sigonius, (Carolus)
 Strauchius, (Johan.)
 Straccha, (Benvenuto)
 Stymannus,
 Santerna, (Peter)
 Salmasens,
 Schellenge, (Pierre Vander)
 Sarpi, (Peter Paul)
 Thénvenot,
 Targa, (Carlo)
 Tillet (Jean du)
 Toullier, (E B M)
 Terrasson, (Aut)
 Tassand, (Pierro)
 Voetius, (Johan)
 Voetius, (Paulus)

Valin, (René Josué)	Wissenbachius,
Vinnius, (Arnold)	Warnkoenig, (L. A.)
Vattel, (Emer de)	Weytsen, (Quintin)
Verwer, (Adrian)	Zazius, (Ulricus)
Van Leeuwen, (Simon)	Zentgravius, (Johannes)
Wolfius, (Johannes)	Zypæus, (Franciscus)
Wesembechius, (Math.)	Zoezius, (Henricus)

II. OF LEGAL BIBLIOGRAPHY IN GENERAL

A ZEAL for the acquisition of true knowledge is sure to beget particularity as to the sources whence it is to be derived. As the mind becomes expanded by reading, it becomes more fastidious in its selections, and is content only when supplied with the choicest means of instruction in the various departments of learning.

On almost every topic of the law, there has been much bad, as well as good writing: some authors, in a single page, convey more useful knowledge, than others in a chapter, some in a few words give the essence, whilst others deal in generalities, and expand the same idea through varied modes of expression. Selection, therefore, as to works that are to be read, is of great moment; but in the formation of a library, it becomes of much less importance. It is a lawyer's province, however, to be well informed as to the best productions in every department of his science,—their merits and defects, and their respective, and relative weight or authority. The press teems with new works, and with editions of existing works, variously fashioned, and often greatly improved, all of which should be familiarly known to the practising lawyer. Nor is this knowledge difficult of attainment, or onerous as to expense or time. The numerous excellent law journals of England, France, Germany, and of this country, are replete with such information: they also present a faithful chronicle of the progress of our science throughout the world,—contain valuable essays on difficult, or doubtful questions in law, and trace the growing improvements, and philosophy of civil, political, and

criminal legislation in all countries. Such works should be in the hands of every student, lawyer, legislator, and statesman; as they present, in a short compass, much research on most points; interesting matters of legal biography, and bibliography, of comparative jurisprudence, proposed and actual amendments in the law; and finally, all that appertains to existing, speculative, and historical jurisprudence.

The science of bibliography is to be carefully distinguished from bibliomania, the one being discriminative, meritorious, and highly useful, the other morbid, vain, omnivorous, and no less ruinous to the mind, than to the purse. We have called the former a science; it has become one, much more than is generally known in our country, where extensive libraries are but little known, and where selection, and the classification of books, have not been much practised.

It is the province of bibliography not only to classify knowledge into that which is useful, curious, and insignificant; but, to select from all ancient and modern lore, what is most valuable, to know what works are abundant, what are rare, either absolutely, or relatively, and the causes thereof, where the best editions are to be obtained, as respects accuracy of typographical execution, paper, binding, price, &c.—what are the desiderata as to books, in any branch of science or of art; and finally, all that appertains to the collection, and philosophical arrangement of a library. The same may be said of the bibliography of any particular science: and in jurisprudence, every lawyer should be a bibliographer (though he may not have the means or inclination to obtain an extensive library,) for the knowledge of law works, and of books of kindred sciences, their classification, &c. may be obtained, in a great degree at least, without the actual owning of a single volume. The celebrated Melancthon's library is said to have consisted of only four authors,—Plato, Plutarch, Pliny, and Ptolemy, the geographer! This, no doubt, was carrying *selection* to an extreme, even for those days; and the fact, if true, is mentioned by no means for imitation in our times, but for instruction, that we

may avoid extremes. The loading of our shelves with books of knowledge, though it may be an equivocal evidence of a fondness for reading, and still less of a habit of methodical study, is yet apt to beget some intelligent curiosity, which may ripen into a thirst for knowledge. But when an accumulation of books is made without regard to selection, with no increasing interest as to their contents,—without regard to expense, and with no just proportion to our means, it is then a morbid, idle passion, which renders its unhappy possessor nearly incapable of any research, disposes him to revel only on such sweets as are cursorily and easily procured, instead of nourishing his mind with the substance that may be extracted, by methodical and close study, from the extensive means which are before him. Let the student of law, then, follow neither the unmeaning and narrow example of Melancthon, nor the vain and ruinous one of that large class of mere *collectors*, to whom have been attached the opprobrious names of bibliomane, and bibliomane.

The methods of classifying books, or what are called systems of bibliography, require in those who form them, not only learning, but a clear and analytical insight into all the connections and dependencies of knowledge. This intimate relation of the various sciences and arts, was represented, mythologically, by the muses dancing together as affectionate sisters, who, as Cicero expresses it, *quasi cognatione quâdam inter se continentur*. This genealogy, as it were of consanguinity and affinity, of the numerous departments of knowledge, with their minute subdivisions, rests on principles more deeply latent than even librarians are usually aware of. Though surrounded by the collections of all ages, they are not always bibliographers, and are sometimes extremely deficient in all that appertains to the *science*, however well instructed they may be in what is aptly called *material* bibliography. The systems to which we allude are often founded on Lord Bacon's classification of knowledge, but others have made a wider and more minute arrangement. The French

savants are particularly distinguished, and the Germans next, as bibliographers. and though the English have made no progress in the legal branch of the science, they have done something in the general subject. The systems and works of most note in France are those of *Peignot*, *Carlleau*, *Barbier*, *de Bure*, *Beuchot*, *Achard*, *Brunet*, *Diderot*, and in our science, *Camus* and *Dupin*. The German bibliographers are still more numerous, but more particularly in the separate branches, than in universal and systematic bibliography; in the latter of which, *Ebert* and *Ersch* are the best known. Among the Italians are *Teraboschi*, *Mazzuchelli*, *Morric*, *Gamba*. In England we have Dr. Clarke, Mr. Horne, Mr. Dibdin, and Dr. Watts, on the general subject, and in jurisprudence (beyond a naked catalogue) we have scarce another name than Bridgman, whose 'Short View of Legal Bibliography,' London, 1807, 1 vol. 8vo we regret to say, (unlike his other works,) is wholly unworthy of the subject.

The legal bibliography of France and of Germany, especially in the separate treatises on various branches of law, is extensive, exact and learned. In addition to the '*literature*,' so usually found at the head of each chapter in the legal productions of the continent, there are extensive treatises on the general subject of legal bibliography.

In addition to those already mentioned, we may name those of *Lepenius*, *Struvius*, *Madhenius*, and *Archard*, the titles of whose works will be hereafter given. We refer our student to Title X. ante page 484, for an alphabetical list of most of the works of the ancient and modern civilians; which, with the additional works named in the course of the present title, will give a tolerably correct idea of the sources of continental legal bibliography. American lawyers, statesmen, general scholars, and librarians, are too apt to neglect the subject of general bibliography. It is important that our public libraries, now becoming extensive and valuable, should be selected with judgment and knowledge; and be arranged according to the most approved and scientific system,—and this can be

effected only by seeking for those lights which have been shed on the subject by the industrious and pains-taking philosophers of the old world, and adding our own, which, happily, is not inconsiderable in any science which is so fortunate as to attract the special regard of the learned of our country

Legal bibliography, as well as legal biography, may be divided into *British*, *American*, and *Continental*,—and we shall submit what we have further to say on this subject, under this threefold division

§ 1. OF BRITISH LEGAL BIBLIOGRAPHY.

[~~Q~~ *British law is derived from the six following sources, viz* 1 HISTORY 2 ACTS OF PARLIAMENT 3 REPORTS of judicial proceedings and decisions 4 ABRIDGMENTS and DIGESTS of the law 5 TREATISES on the law of nature and of nations 6 TREATIES with foreign nations 7 TREATISES on the various branches of instituted law 8 MAGAZINES or repositories of legal essays, &c The numerous volumes in which these subjects are found, constitute the BIBLIOTHECA LEGUM of that country, and British legal bibliography consists of such an acquaintance with their existence, their comparative merits and defects, their authority, and their general contents, as enables the lawyer to refer with confidence to the most approved sources of information on any given legal subject, and finally, of such an acquaintance with them as would enable him to arrange them all under some practical and scientific classification This subject is altogether too extensive for the object of our volume We must leave the matter to the intelligence and industry of our student, after pointing out a few sources, in which he will find much of this information brought within a narrow compass]

SOURCES OF BRITISH LEGAL BIBLIOGRAPHY

- 1 Bridgman's 'Short View of Legal Bibliography' 1807, 1 vol 8vo
- 2 Worrall's *Bibliotheca Legum* London, 1756, and Butterworth & Son's
- 3 Clarke's *Bibliotheca Legum*. London, 1810, 1 vol 8vo London, 1815 London 1819, 1835
- 4 Brooke's *Bibliotheca Legum Angliæ*
- 5 Chronological Table of British Reporters, from 1660 to 1823 [~~Q~~ *Vide Petersdorff's Abridgment*, vol 1, page xi]
- 6 A Glossary of Abbreviations and References, of Reports and Treatises [~~Q~~ *Vide Petersdorff's Abridgment*, vol 1, page xliii *Vide also* Crabb's *History of English Law*, American edition

7. Reeves' History of the English Law. [In these volumes will be found *passim*, many excellent bibliographical and biographical notices of the ancient works, and sages of the law, particularly worthy the student's regard, and which is now mentioned only for those who, from any cause, has failed to read this work in the course of his previous studies, and in the place where we have noted it—
Vide ante page 136—161

8 'Of Books of Reports, and Treatises on English'—Kent's Commentaries, vol 1, page 471 to 514

9 Gibbs' Judicial Chronicle *Cambridge, Mass.* 1834 [H] This is a very useful little volume, consisting of a series of tables in which are arranged chronologically, and alphabetically the names of the British and American judges, chancellors, reporters, &c Mr Justice Story remarks of this work—'I know of none of the kind, at all comparable to that of Mr Gibbs, in extent and variety of information, and so well fitted for daily use' It aims, however, at nothing beyond a naked list of names and dates, most conveniently arranged]

... ..

§ 2. AMERICAN LEGAL BIBLIOGRAPHY.

WE have had occasion, in Note 29, ante p. 284, to remark on the progress of American jurisprudence, more particularly on the growth of the science as evidenced by the numerous valuable *judicial reports*; and we may now add, by a number of meritorious treatises on various departments of our science. A homogeneous system of law throughout this extensive country, (however desirable) can scarce be expected. The force of long continued custom, though very inconsiderable compared with England; the jealousy of twenty-four state sovereignties; the variety in the physical, moral, and intellectual condition of the people of these states; and the numerous other causes productive of local, rather than of national character, are still, in some degree operative, and must produce and continue a correspondent discrepancy in the laws of the several states. And though we have a common language, a national system of law, political, civil, and criminal,—and, above all, extraordinary facilities of intercommunion, which are availed of more extensively than is practised in any other country; still, the legislation of so many states,—the local customs which gradu-

ally arise among a people commencing their national existence, sometimes with nearly the first elements of society, and with all the primitive forms that belong to restricted means, and a very sparse population; the sudden influx of law, from the subsequent equally sudden influx of population, which at various times took place,—together with the judicial interpretations of imperfectly organized courts, have given to our country the character of a federative Union of independent states, promoting their individual well-being by such laws and institutions as are deemed specially expedient for each. In the legal scheme and policy, however, of every state of the Union there are, nevertheless, many branches of law which are nearly identical in all. On such subjects, homogeneity of judicial decision is very important,—and this is greatly promoted by the publication in nearly every state, of numerous books of reports. The increase of this portion of our legal literature within the last thirty years, has no parallel in the juridical history of any other country. More than four hundred and fifty volumes of American law reports now load our shelves! and the number of British books of reports, republished with notes, and other additions, is equally extensive. The bibliography of our country is not, however, confined within even these limits, for the statute law of the general government, and of the states, occupy at least one hundred and fifty volumes,—to which must be added many valuable original treatises on various departments of the science,—and numerous republications, and translations of British and of Continental works, often much improved by able annotations, to these we must further add many repositories of legal essays, &c. such as the *Jurist*, *Hall's Law Journal*, &c. in which department our country has taken a decided lead of England, and is in advance, perhaps, of more countries,—though, in separate essays and legal discussions, we fall greatly behind the Germans and French.

Under the head of British legal bibliography we have been content to refer the student to the sources merely,—but on the

subject of Continental legal bibliography we have gone further.* In respect to American legal bibliography we now state the few sources which exist, and subjoin a list of the existing reports, which two, we hope, will sufficiently illustrate its present condition.

SOURCES OF AMERICAN LEGAL BIBLIOGRAPHY.

[We are not aware of any perfect catalogue of American law works. The state of our legal bibliography can only be ascertained by a careful examination of such works as Griffith's Law Register—the various Law Journals and Magazines, Gibbs' Judicial Chronicle, the annual catalogues published by the more eminent booksellers, all of which catalogues are, however, extremely partial and imperfect. The subject is already sufficiently extensive to fill a volume, were the titles, and other relative matters fully stated. In the course of our work we have accomplished all in this respect that our prescribed limits would admit.]

LIST of American Books of Reports, published between the years 1789, and 1836; arranged according to the States and Courts to which they respectively appertain.

VERMONT

			VOLUMES
Chipman's Reports, (<i>Supreme Court</i>).....	†1789—1824	pub. 1824,	1
Tyler's Reports, (<i>Supreme Court</i>).....	1800—1803	pub. 1809, &c	2
Aiken's Reports, (<i>Supreme Court</i>).....	1825—1828	pub. 1827, &c	2
Brayton's Reports.....	1815—1819	.....	1
Vermont Judges' Reports.....	1826—1834	.....	6

NEW HAMPSHIRE.

Adams' N. H. Reports, (<i>Superior Court</i>).....	1816—1819	pub. 1819,	1
New Hampshire Reports.....	1820—1834	.....	6

MASSACHUSETTS.

Massachusetts' Reports,† (<i>Supreme Judicial Court</i>).....	1805—1822	pub. 1805, 1808	
		to 1823.....	17
Pickering's Reports, (<i>Supreme Judicial Court</i>)..	1822—1835	pub. 1824, &c.	12
Trial of Solfridge for killing Austin.....	1806	.....	1

* Vide ante p 340, 370, 431, 454, 486 to 500, 544, 579, and post sec 3, of the present Division

† This refers to the period of the judicial decisions.

‡ The first volume by Williams, the remaining by Tyng. Vide Rand's edition.

		VOLUMES.
Cushing's Contested Election Cases in the House of Representatives.....	1780—1834 pub. 1834	1
Trial of Kneeland for Blasphemy	1834	1
Trial of Buzzard for Arson and Burglary in the Ursuline Convent..	1835	1
Trial of Mason and others, for same.....	1835 ..,	1
Trial of the Spanish Pirates.....	1835	1
Whitman's Label Cases..	1828, &c	1

MAINE

Greenleaf's Reports.....	1820—1833 ..	9
Fairfield's Reports.....	1833, &c pub. 1835,	1
Smith's Reports in the Circuit Courts-Martial ..	1827—1831	1

CONNECTICUT.

Kirby's Reports, (<i>Superior Court</i>)	1785—1788 pub 1789,	1
Root's Reports, (<i>Superior and Supreme Courts</i>)	1789—1798 pub 1798, 1802,	2
Day's Cases, (<i>Supreme Court</i>).....	1802—1813 pub 1806, 1823,	5
Day's Connecticut Reports, new series, (<i>Supr Ct</i>)	1814—1832 pub 1817, &c	10

NEW YORK

Caine's Term Reports, (<i>Supreme Court</i>)....	1803—1805 pub. 1804, &c.	3
Caine's Cases in Error, (<i>Courts of Impeach- ments and Errors</i>).	1801—1804—1805 pub 1805, 2	
Coleman and Caine's Cases, (<i>Supreme Court</i>) .	1794—1805 pub 1808,	1
Johnson's Cases, (<i>Supreme Court</i>)	1799—1803 pub 1808, 1810,	
	1812	3
Johnson's Reports, (<i>Supreme Court and Court of Impeachments and Errors</i>).....	1806—1823 pub 1807, &c.	20
Anthon's Nisi Prius Cases	1807—1818	1
Cowen's Reports, (<i>Supreme Court, &c</i>)..	1823—1829 pub 1824, &c	9
Johnson's Chancery Reports..	1814—1823 pub 1816, &c	7
Wendell's Reports, (<i>Supreme Court, &c</i>) . . .	1828—1835	12
Hopkins' Chancery Reports.....	1823—1826 pub 1827,	1
Pago's Chancery Reports.....	1828—1831 pub 1830, &c	4
Hall's Reports, (<i>Sup. Court of the city of N. Y.</i>)	1828—1830 pub. 1832, &c	2
Rogers' City Hall Recorder....	1816—1822	*6
Wheeler's Criminal Cases, decided in New York and elsewhere.....	..... pub 1823, &c	3
Edwards' Vice Chancery Reports	1831	1

		VOLUMES
Sampson's Report of the Cordwainer's Cases...	1809	..... 1
Sampson's Report of the Catholic Question Case	1813	..... 1
Yeates' Select Cases.....	pub 1811,	1

NEW JERSEY.

Pennington's Reports, (<i>Supreme Court</i>)	1806	..... *2
Southard's Reports, (<i>Supreme Court</i>)	1818—1820	..... 2
Halsted's Reports, (<i>Supreme Court</i>)... ..	1821—1831	..... 7
Green's Reports, (<i>continuation</i>)... ..	1831, &c	..... 2
Coxe's Reports	1790—1795	pub 1816, 1

PENNSYLVANIA.

Dallas' Reports, (<i>In the State and United States Courts</i>).....	1754—1806	pub 1799, &c. 4
Addison's Reports, (<i>County Court of the fifth Circuit, and Court of Appeals</i>)....	1791—1799	pub 1800, 1
Yeates' Reports, (<i>Supreme, and other Courts</i>)	1791—1807	pub 1817, 4
Binney's Reports, (<i>Supreme Court</i>)	1799—1814	pub 1809, &c 6
Browne's Reports, (<i>Common Pleas, 1st Dis &c</i>)	1806—1814	pub 1811, 1813, 2
Sergeant and Rawle's Reports.....	1814—1829	pub. 1818, &c 17
Rawle's Reports, (<i>Sup Court Eastern District</i>)	1828—1834	.... † 5
Wharton's Reports, (<i>continuation</i>)... ..	1835—1836	..... 1
Penrose and Watts' Pen Reports (<i>Supr. Court, Middle, Southern and Western Districts</i>)..	1829—1832	pub 1830, &c 3
Watts' Reports, (<i>continuation</i>).... .	1832—1835	pub. 1832, &c † 4
Ashmead's Reports, (<i>Common Pleas, and Orphan's Court, 1st District</i>)	1810—1830	pub. 1831, § 2
Smith's Trial for the murder of Carson	1816	..... 1
Shaler's Report of the Journeyman Cordwainer's Case.....	1816	..... 1
Hogan's Pennsylvania State Trials	pub 1794,	1
Carson's Report of the Trial of Eberle and others, for Conspiracy, in respect to St Michael's and Zion's Churches.....	1817	..... 1

* Vide recent new edition, in one volume.

† Fifth volume in the press

‡ Fourth volume in the press

§ Second volume in the press

MARYLAND

Harris and McHenry, (<i>Provincial, General, and Appeal Courts</i>)	1658—1799	pub. 1802, &c	4
Harris and Johnson, (<i>General Court, and Court of Appeals</i>)	1800—1828	pub. 1821, &c.	7
Harris and Gill, (<i>Court of Appeals</i>)	1826—1829	..	2
Gill and Johnson, (<i>same</i>)	1820—1834	.....	6
Bland's Chancery Reports	1824—1836	.....	* 1
Trial of Hafe, for robbing the mail	1824	... ..	1
Report of the Conspiracy Cases connected with the U S Bank, at Baltimore, 1823 . . . . .	.....	.....	1

VIRGINIA

* Call's Reports, (<i>Court of Appeals</i>)	1797—1802	pub 1801, 1802,	3
Call's Reports, (<i>continuation</i>)	1779—1818	pub. 1834,	3
Henning and Munford's Reports, (<i>Court of Appeals and select cases in Chancery</i>)	1806—1809	pub 1809, &c	4
Munford's Reports, (<i>Court of Appeals</i>)	1809—1820	pub 1812, &c	6
Wyth's Chancery Reports	1790—1791	.....1795	1
Washington's Reports, (<i>Court of Appeals</i>)	1790—1796	pub 1798,	2
Gilmer's Reports, (<i>Court of Appeals</i>)	1820—1821	.....	1
Randolph's Reports, (<i>Court of Appeals—General Court</i>)	1822—1826	pub 1823, &c	5
Brokenbrough and Holmes' Virginia Cases, (<i>General Court</i>)	†1st vol 1799—1814,	pub 1815	
2d vol by Brokenbrough, 1815—1826	pub 1826	.....	2
L Leigh's Reports, (<i>Court of Appeals—General Court</i>)	1829, &c	.....	4

NORTH CAROLINA

Cameron and Norwood's Reports	1800—1804	pub	1
Taylor's Reports, (<i>Law and Equity</i>)	1798—1802	pub	1
Haywood's Reports, (<i>Law and Equity</i>)	1789—1806	pub.	† 2
Murphy's Reports, (<i>Supreme Court</i>)	1804—1819	pub	3
Hawke's Reports, (<i>Supreme Court</i>)	1820—1826	pub	4
Ruffin's Reports, (<i>contained in 1 vol of Hawke's Reports, to page 248</i>)			

* This volume, as we learn, is the first of a series, from which the Profession cannot fail to derive much advantage

† Chiefly criminal cases

‡ See recent edition

VOLUMES

Devereux's Chancery Reports,.....	1826, &c	.....	1
Devereux's Reports	1826—1832	pub 1829,	2
Devereux and Battle's Reports	1834	.....	1
Martin's Reports....	.....	.....	1
North Carolina Law Repository .....	.....	pub 1814—1816,	2

SOUTH CAROLINA

Bay's Reports, (<i>Superior Courts</i>).....	1783—1804	.....	2
Dessaussure's Chancery Reports.....	1784—1813	pub.	4
Nott and McCord's Reports, (<i>Constitutional Court</i>)..	.....	.....	.....
.....	1817—1820	pub 1821, &c.	2
McCord's Reports, (<i>continuation</i>)	1821—1828	pub 1822, &c	4
McCord's Chancery Reports.....	1825—1827	... ..	2
Constitutional Reports.	1812—1816	pub 1823,	* 2
Constitutional Reports.....	1817—1818	pub 1819,	2
Constitutional Reports, (<i>new series</i>)	1823—1824	.....	2
Harper's Law Reports	1823—1824	.....	1
Harper's Equity Reports.....	1824	pub 1825,	1
Hill's Reports, (<i>Court of Appeals</i>).....	1833	pub 1834,	1
Bailey's Reports....	1828—1832	pub 1833—4,	2

KENTUCKY.

Hughes' Reports	1785—1801	.....	1
Hardin's Reports, (<i>Court of Appeals</i>).....	1805—1808	.....	1
Bibb's Reports, (<i>Court of Appeals</i>)	1808—1817	pub. 1815, &c	4
Kentucky Reports	1801—1805	.....	1
Marshall's Reports	1817—1823	.....	7
Littel's Reports	1822—1824	... ..	6
Monroe's Reports	1824—1830	.....	7
Danu's Select Cases.	1833—1834	.....	2
Littel's Select Cases.....	1795—1821	.....	2

TENNESSEE.

Overton Law and Equity Reports..	1791—1817	.....	2
Cooke's Reports.....	1811—1814	.....	1
Heywood's Reports, (<i>Superior Courts of Law and Equity</i>)....	1789—1818	.....	† 5

* Also a few cases in 1818—1822

† The 1st vol published 1799, contains cases prior to the separation from North Carolina. The 3d, 4th, and 5th volumes contain the Tennessee cases, from 1816 to 1818, published 1818

		VOLUMES
Peck's Reports	1822--1824	1
Martin and Yerger's Reports.	1825--1828	2
Yerger's Reports.. ..	1818--1835	6

GEORGIA

Charlton's Reports. (<i>Superior Courts, Western District</i>)	1805--1810 pub 1824,	1
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ALABAMA

Minor's Reports	1820	1
Stewart's Reports	1827--1830 pub 1830,	2

OHIO.

Hammond's Reports, (<i>Supreme Court</i>).....	1813--1833, &c ..	* 6
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ILLINOIS.

Breese's Reports	1819, &c	1
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INDIANA

Blackford's Reports.....	1817, &c	2
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LOUISIANA

Martin's Reports	1809--1830	20
Martin's Reports, (<i>new series</i>).. ..	1823--1830	† 9
Miller's Reports....	1830--1833	5
Curry's Reports.. ..	1833--1835	8

UNITED STATES COURTS

SUPREME COURT

Cranch's Reports	1801--1815 ..	† 9
Wheaton's Reports.....	1816--1827	† 12
Peter's Reports.....	1828--1835	† 9
Gallison's Reports, (<i>1st Circuit</i>).....	1812--1815	§ 2
Mason's Reports, (<i>1st Circuit</i>)....	1816--1830	§ 5
Sumner's Reports, (<i>1st Circuit</i>) ..	1829--1834	§ 1
Paine's Reports, (<i>2d Circuit</i>).....	1808--1826 .....	|| 1
Van Ness' Reports, (<i>2d Circuit</i>).....	1814'	1
Peters' Reports, (<i>3d Circuit</i>).....	pub 1819,	** 1

* The sixth volume in press

† There are but twenty volumes in all, the new series commencing with the eighteenth volume—being bound up with the other twelve volumes

‡ John Marshall, Chief Justice

§ The Hon Joseph Story, Chief Justice

|| Hon Brockholst Livingston—Hon Smith Thompson, Chief Justices

** The Hon. Bushrod Washington, Chief Justice

Washington's C C Reports, (3d Circuit) by Richard Peters, Esq [<i>These, with the pre- ceding volume, embrace the decisions of Mr Justice Washington, from 1803 to Oct 1827.</i>] .....	.....	.....	.....	* 4
Wallace's C C. Reports, (3d Circuit)	1801	pub. 1801,		1
Peters' Admiralty Reports, with learned notes, and Appendixes, (<i>District Court U S Penn- sylvania.</i>).....	1792—1807	.....		2
Bee's Admiralty Reports, (<i>District Court U. S.— South Carolina</i>)	1792—1805	pub. 1810,		† 1
Evans' Report of the Trial on Impeachment in the Senate, of the Hon Samuel Chase, one of the Associate Justices of the Supreme Court of the United States .....	.....	pub. 1805,		1
Stansbury's Report of the Trial of Judge Peck, by the U S Senate .....	.....	pub 1833,		1
Robertson's Report of Burr's Trial.....	.....	pub 1808,		2

RESULT

§ 3 FROM the foregoing list of American Reports of judicial decisions in the State and Federal Courts, and in the United States Senate, it appears that the total number of volumes published, with a few now in press, amount to FOUR HUNDRED AND SEVENTY-THREE, which are divided as follows

	VOLS		VOLS		VOLS
Vermont	12	Pennsylvania..	53	Georgia.....	1
New Hampshire....	7	Maryland.....	22	Alabama....	3
Massachusetts.....	36	Virginia.....	31	Ohio.....	6
Maine.....	11	North Carolina..	18	Illinois....	1
Connecticut....	18	South Carolina ..	25	Indiana.....	2
New York..	78	Kentucky ..	31	Louisiana..	34
New Jersey.....	14	Tennessee.....	17	United States Courts...	53

* The decisions of this court since the termination of the Reports of the late Mr Justice Washington, are now in press, under the care, as we learn, of the Honourable Judges Baldwin and Hopkinson.

† Appended to this volume are some of the Admiralty Decisions of the late Hon Francis Hopkinson, in the Admiralty Court of Pennsylvania, from 1779 to 1785.

§ 3. CONTINENTAL LEGAL BIBLIOGRAPHY

[The jurisprudence, in common with the language of Europe, is miscellaneous in its origin and character. The Roman law, however, lies at the foundation of most of the systems of the various states of the Continent, to which have been added extensive usages, some positive enactments, a few codes or collections of laws on particular branches, a few general codes, numerous judicial expositions of the whole of these,—and finally, an almost infinite number of treatises of more or less authority—all of which constitute the various sources of continental law. To the statesmen, legislators, and scientific lawyers of our country, all of these have more or less interest, but they claim a more special regard from those who preside on the supreme bench, from those who practise their profession in Louisiana, or Florida,—from lawyers specially called on to digest or codify the jurisprudence, or any branch thereof, of any of the American states,—and finally, from all who cultivate law as a science, and whose legal philosophy goes much beyond the limits of the Common Law of England. The great extent of the legal bibliography of the Continent may be seen, in part by the lists we have given of many of their legal productions.* We need offer nothing more on this subject than an enumeration of the principal works which treat of the legal bibliography of the Continent, many of which, however, contain also a good deal of biographical information.]

SOURCES OF CONTINENTAL LEGAL BIBLIOGRAPHY

- STRUVIUS *Bibliotheca Juris Selecta* *Jenæ*, 1758, 2 vols 8vo
 FONTANA *Bibliotheca Legalis*. *Parma*, 1694, 5 vols fol
 LIPENIUS *Bibliotheca Realis Juridica* *Lipsiæ*, 1730, 1737, 1789 Madibu's edition, 1817, 1823, 2 vols fol
 LABITTUS *Index Librorum omnium Juris* *Frankfurti*, 1585, 4to
 ULMENSTEIN *Bibliotheca selecta juris civilis Justiniani* *Berolini*, 1822, 8vo
 MEISTERUS *Bibliotheca Juris Naturæ et Gentium* *Gotttingæ*, 1756, 3 vols 8vo
 NETTELBLADT *Initia Historiæ litterariæ juridicæ universalis* *Haltæ*, 1771, 8to
 WATTS. *Bibliotheca Britannica* *Edinburgh*, 1824, 4 vols 4to
 DUPIN *Bibliothèque choisie des livres de droit*, par M. Camus, 5e édition *Paris*, 1822, 2 vols 8vo
 BRUNET *Le Manuel du Libraire* *Paris*, 1820, 4 vols 8vo
 BARDIER *Dictionnaire des Anonymes et Pseudonymes*, 4 vols 8vo
 BEUCHOT *La Bibliographie de la France*, 1811, 1830, 9vo

¶ There is also much information respecting the bibliography of the continent, down to the present day, in the following works. KLUBER's *Droit de Gens*, *Paris*, 1831, 2 vols 8vo.—In the 2d vol p 170, *Bibliothèque choisie du droit des gens*. WARNKÖNIC's *Commentarii Juris Romani*, *Leodii*, 1825, 2 vols 8vo *passim*. THIEMIS, on *Bibliothèque du jurisconsulte*, *Paris*, 1829, 1831, 10 vols *passim*. *Manuel complet pour Les Aspirans*, *Paris*, 1833, 12mo. *Nouveau Guide des Étudiens en Droit*, *Paris*, 1828, 12mo. The late bibliographical works, also of ERSCH, and of STEEF, in German, are well spoken of.

* Vide ante p. 340, 370, 431, 454, 486 to 500, 544, 579

DIVISION IV.

LEGAL REVIEWS, ESSAYS, JOURNALS, MAGAZINES, &c —BRITISH, AMERICAN, AND CONTINENTAL

'As St Austin saith of short and holy ejaculations, that they pierce heaven as soon, if not quicker, than more tedious prayers, so I have reaped greater benefit from *concise* and *casual* essays on *several* topics, than from long and voluminous treatises, relating to one and the same thing'—*Osborn's Works*

SUFFICIENT has been said and done, as we trust, in the course of our work, to exempt us from the imputation of giving the slightest encouragement to those who would draw their mental nourishment from other than solid and enduring sources. Nor are we to be understood, in adopting the foregoing motto, as placing much reliance on knowledge gained from such 'concise and casual essays,' but as auxiliary merely to previous solid attainments, acquired through the means of laborious and methodical study. If, however, there be those who, reposing on their natural inertness, regard reading (not as study) but as a 'dozing idleness,' an opiate to bring on pleasing slumbers with their eyes open—and abridgments, essays, and periodicals, as the living fountains of knowledge, and the truest repositories of the sweets distilled by others for their use, from the laboured volumes of the drones of the learned,—there are others who equally err, when they honestly or affectedly condemn *en masse* this 'reading by deputy'—and to whom even the excellent journals and periodicals of our day, convey no other idea than that of mawkish distillation for superficial minds. We entertain a different opinion, and regard that plan of study as eminently profitable, which combines with our severer researches, the careful perusal of the legal essays, dissertations, reviews, and periodicals generally, which are dedicated to our science.* Such essays are often the elaborate distillations of great research—the condensed

* Vide ante Note 30 p. 286 Note 17 p. 365, 366 Note 8, p. 569. Note 4. p. 576 Note 10 p. 590, in further illustration of the utility of this branch of our legal literature

expositions of difficult topics lurking in the half-forgotten pages of numerous authors—the speculative wisdom of independent minds—the novel but crude theories of untrammelled genius, which lead the way to greater and more solid improvements. Such lights should not be disregarded, and will not be, except by mere pretenders, who affect deep researches into original channels only, and thus lose the substance of learning for the vanity and euphony of a name. The two extremes we have mentioned must be carefully avoided. And though we believe it to be the tendency of our age, in respect to mental exertions at least, to repose too much on the numerous labour-saving means, almost daily devised or improved, we are by no means disposed to neglect the judicious use of such auxiliaries. With this limitation, we regard the character of our times as signally, and worthily distinguished; and we hail the introduction of journals and periodicals as a lustrous era, from which we may date much of that civil, political, moral, religious, and physical melioration of the condition of man, which marks our age above all that the world has ever known. This era of periodicals commenced in Paris, in 1664, with the *Journal des Savants*, by Denis de Sallo, the severity of whose criticisms did not suit the spirit of the age, and having turned the work over to the Abbé Gallois, it assumed a new character, dropped all criticism, and became a mere repository of the titles of books, of abridgments, extracts, &c. But this enterprise gave rise to many others—such as *Les Nouvelles de la Republique des Lettres*, by M. Bayle; *Le Journal de Trévoux*, by Catrou; the German periodical in 1680, entitled *ACTA ERUDITORUM*; the Italian *Giornale d’Litterati*, the British Monthly Review, 1749, continued to the present time. These periodicals increased in number and value in nearly every part of christendom, so that scarce any department of the sciences, of the arts, or of literature is without them; some of which are specially dedicated to separate subjects, among which Law has taken a high rank, especially within the present century. These Journals, Reviews, and Repositories are often sustained

by associations of a few *savants*, or by learned societies,—and thousands of obscure individuals have been rendered thereby both students and authors,—and have emerged into light and usefulness, who might otherwise have remained unprofitable and unknown. That much excellent knowledge has been extensively diffused by them, and has penetrated into directions where its rays could never have reached; and that sound views of thinking and of judging have been thereby greatly promoted, can admit of no doubt. And though Voltaire's censure—*enfin, on est parvenu jusqu' à faire un trafic public d' éloges et de censures, surtout dans des feuilles periodiques; et la littérature a éprouvé le plus grand avilissement par ces infâmes maneges*, continues still too just; yet the value and excellence of the greater part of these journals, &c. remains equally indisputable. The love of knowledge, actual or imaginary, seems to be natural to man; and every age, however rude or enlightened, has had both its peculiar knowledge, and its means of attaining and diffusing it. Much of the learning of one age has been condemned as folly by another; and some of the valuable arts and sciences of former days are now deplored as long since lost. The press effectually secures knowledge from loss, and its cheapness brings it to every man's door. Before this great discovery various means were used for the spread of knowledge—the learned recited their productions in public—the Athenian gymnasia and markets, and the Roman forums were crowded with people of all ranks, anxious in search of news, and of the elements of knowledge, through the medium of conversation. In after times, in the Italian cities, even their barbers (who were often the surgeons, the poets, and wits of the day!) attracted around them a miscellaneous crowd, for the interchange of opinions; and it is related of Domenico Burchietto, that his shop was the resort of the dignitaries and savants of his day. In still more recent times (in France and England especially) clubs were formed, and coffee houses established, which derived their chief support from this lively curiosity and thirst for knowledge—but the

light diffused by the press, and especially the introduction of periodicals, with the numerous devices for diffusing knowledge among all classes, and almost without cost, have changed the character of the forums, and of the markets—degraded the vocation of the barber—given to the clubs a new, and sometimes more valuable direction—converted the coffee houses into restorateurs, and places for silent reading, and finally given to periodicals a power, and an influence, (for weal or for wo) equal to, if not greater than any other known in society

In all of these changes, jurisprudence has reaped an ample portion of gain. Law has been greatly meliorated, its philosophy has been much enlarged, its imperfections freely pointed out,—and a spirit of reform and of amendment has been generated, which can only result in the remodelling, eventually, not only the civil and criminal, but the constitutional jurisprudence, of every nation in christendom. We therefore advise our student to improve his otherwise leisure hours, with the perusal of the reviews of legal works, of the magazines, and other repositories of legal essays,—and especially of such admirable works as the *American Jurist*, the *London Law Magazine*; and several of the continental works, more particularly *La Thémis*. All that remains for us to do, under the present Division, is to introduce to the student's acquaintance such of the principal British, American, and continental periodicals as have been dedicated more particularly to legal science and its cognate topics.

LIST of British, American, and Continental Legal Periodicals and Repositories

BRITISH.

- 1 *The Law Journal*, consisting of original Essays, Opinions, and Reviews. London, 1804 1 vol.
- 2 *Legal Recreations, or Popular Amusements in the Laws of England*, [published in numbers by a barrister at law, 2 vols in one. *This is a work of great merit*]

- 3 The Junst, or Quarterly Journal of Jurisprudence and Legislation *London*, 1827, &c 2 vols
- 4 The Law Magazine, or Quarterly Review of Jurisprudence *London*, June, 1828, April, 1831, 5 vols &c
- 5 Legal Examiner *London*, 1830, &c 2 vols
6. Legal Observer, 1 vol
- 7 Hargrave's Law Tracts. *London*, 1787, 1 vol
- 8 Hargrave's Judicial Arguments and Collections, 1797, 2 vols
- 9 Hargrave's Jurisconsult Exercitations, 1811, 3 vols 4to.
- 10 Robinson's Collectanea Maritima, 1801, 1 vol
- 11 Collectanea Juridica, 1792, 2 vols
- 12 Chalmers' Opinions of Eminent Lawyers, 1814 2 vols

AMERICAN

- 1 Hall's American Law Journal *Baltimore*, Jan 1808, 1817, 6 vols
 - 2 Hall's Journal of Jurisprudence—a New Series of the L. J *Phil* 1821, 1 vol.
 - 3 Angell's U. States Law Intelligencer and Review *R Island*, Jan. 1829, Dec 1831, 3 vols
 - 4 United States Law Journal and Civilian's Magazine, edited by several members of the Bar *New Haven*, 1822 *Phila* 1826, 2 vols
 - 5 North Carolina Law Repository *Raleigh*, 1814, 1816, 2 vols
 6. Charleston, (S C) Law Journal, 1830, &c 1 vol &c
 7. The Journal of Law *Philadelphia*, 1830, 1 vol
 - 8 The Jurisprudent, a Law Newspaper *Boston*, 1830
 - 9 The American Jurist and Law Magazine, January, 1829, 1835, 14 vols &c
- [~~§~~ This work, so creditable to our country, appears quarterly—long may it continue to shed its useful influences.]

CONTINENTAL.

- 1 Thémis, ou Bibliothèque du Jurisconsulte, et du Publiciste, publiée par une société de Magistrates, de Professeurs et d'Avocats *Paris*, 1819 a 1831, 10 vols
- [~~§~~ This excellent periodical commenced in November, 1819, and was published quarterly, in numbers, till its termination in 1831, in the tenth volume During this period, the editors, at different times, were M M Blondeau, Ducaurroy, Demante, Jourdan, Warnkœnig, Pellat, Birnbaum, and Holtius, doctors and professors of great distinction in the law. Each number is generally divided into five great divisions The first embraces dissertations on legislation and the history of jurisprudence, the second takes in essays on administrative jurisprudence, judicial decisions, &c, the third, criticisms and notices of law treatises, the fourth, the teaching of the sciences in all countries—to which is added,

an appendix containing a great variety of topics connected with the progress of the science, biographical sketches of eminent lawyers, &c and this division is but little deviated from throughout the entire work]

- 2 Hugo's *Civilistisches Magazin*—*Civilian's Magazine* Berlin, 1812, 1830, 6 vols
- 3 Grolmann's *Magazin für die Philosophie des Rechts*, &c —*Magazine for the Philosophy of Law and of Legislation* Giessen, 1789, &c 12 vols ;
- 4 Savigny, Eichhorn and Goeschen's *Zeitschrift für Geschichtliche*, &c —*Journal of Historical Jurisprudence* Berlin, 1815, 1826, 5 vols *
- 5 *Revue de Législation et de Jurisprudence* Paris, 1831 [*This journal is designed to supply the place of the Themis, which terminated in 1831, and has not yet come to our hands*]
- 6 Foelix's *Revue Etrangère* Paris, 1833, &c
- 7 *Archiv für die Civilistische Praxis*—*Archives of Civil Practice*, edited by Gensler, Mittermaier, Schweitzer, de Lohr, and Thibaut Heidelberg, 1818, &c 17 vols
- 8 *Kritische Zeitschrift für Rechts—Wissenschaft und Gesetzgebung* —*Critical Journal of legal Science and Legislation*, by Mittermaier and Zacharie Heidelberg, 1834
- 9 *Critical Journal of Jurisprudence*, edited by Schrader, Mohl, and others Tübingen
- 10 *Journal of Civil Jurisprudence and Procedure*, edited by Linde, Mazeroll, and others. Giessen, 1828, &c. 3 vols
- 11 *Annals of Legal Literature in Germany*, by a society of Jurisconsults

☞ The foregoing list will sufficiently evidence the extent and great importance of this branch of legal literature on the continent, and to this extent, at least, these works ought to be found in the library of the scientific lawyers generally of our country, as the law this side of the Atlantic is destined, we think, to assume to itself much of the philosophy and general equities of the continental systems, in lieu of the refinements of many parts of the Common Law †

* *This Journal has been continued by Dr. Klenze, of Berlin, and promises to sustain fully the high reputation it had acquired under its former able administration*

† Vide post Division V remarks on Codification and Amendments of the Laws

DIVISION V

‘I migliori codici possono in qualche avere le loro vicende. Quell’ istesse leggi, che hanno prodotto la grandezza, e l’opulenza d’un popolo, possono essere inefficaci a conservarlo in questo stato’—FILANGIERI *La Scienza della Legislazione*

‘The grounds for a legislative alteration of a legal establishment is this, and this only—that you find the inclinations of the majority of the people, concurring with your own sense of the intolerable nature of the abuse, are in favour of a change’—

[BURKE’S *Speech on the Acts of Uniformity*]

CODEFICATION, AND PROPOSED AMENDMENTS OF THE LAW

THE controversy which has existed in various parts of Europe, and in some degree in this country, for some years past, (and which continues in the former with unabated ardour) respecting the reform of their civil, criminal, and political laws, though of less consequence to us than to them, is one still of considerable importance here, with which it behooves our legislators and jurists (especially those called to aid in the amendment, the consolidation, and digesting of laws,) to be familiar, and students to have some knowledge. Our remarks on this subject will be as brief as may consist with our desire to arrest for a moment the attention of the former; to afford to the latter some idea of the history, and objects of the controversy, and to furnish to both an ample list of the best sources of information on the philosophy, history, and practical results, of what has been so generally known under the name of Codefication.

In various parts of the present work,† and in a former one,‡ we explained the nature of the controversy, and the general object of codefication, which we may here remark, is either general or partial; if the former, then of the constitutional, statute, judicial, and unascertained law, (in other words, of

* *Niuno poi de Locke ha conosciuta questa verità. Egli n’era così persuaso che destinato ad essere il legislatore della CAROLINA, volle, che dopo cento anni si fosse cambiata la sua legislazione. Così pensano i legislatori Filosofi*—Filangieri tomo i. p. 105

† Vide ante p. 353, 437, 530, 565

‡ *Legal Outlines*, vol. I, p. 291, &c. 464, &c.

the law *in esse*, and of the law *in posse*,) if the latter, then of the statute law, or parts of the same, which may be by *consolidation* only, or in the form of a regular code, in which the statutes have been classified, amended, freed of their verbiage, &c or of the judicial law, or parts thereof, in which the decisions have been classified, analyzed, freed from doubt, and contradiction, and finally all the objections to this source of law, removed.

As to the practicableness of codefication, even in its largest sense, there can be no rational doubt, but its policy, under particular circumstances, and the hands into which such a momentous trust should be reposed, are matters which should never be blended with the question of its feasibility. The overweening veneration for ancient laws, the force of long continued usage; the clamours raised by those immediately connected with the existing order of things, the indiscriminating opposition of party rancour, the narrow views of such subjects, which the partially informed necessarily take; the ridicule and odium often attached to innovations; the theories of various schools or sects of legists, have all been invoked to retard the progress of legal reforms. Those favourable to codefication, whether general or partial, and even to consolidation, have laboured under the imputation of opinions, never their own; and objections have been raised, and inflamed into importance, on the assumption that errors and imperfections in existing codes, and their partial failure, arise from inherent and insurmountable causes: the brief reply to all of which is, that an approximation is better than no approach to perfection; that the most zealous never contemplated an unchangeable code; and that no one ever seriously hoped to embrace every possible rule of law, none desired to exclude all interpretation; and yet that a universal code, attaining comparative certainty, fixedness—such clearness, as would seldom require the aids of interpretation, and such comprehensiveness, as would but seldom require additions, is morally practicable, and could not fail to be productive of very salutary results. If such a great

undertaking *cannot* be kept from the unholy hands of visionary and rancorous politicians; from those full of the prejudices of ignorance, from the enemies of that rich, copious, and admirable fountain—the common law; (though it hath its bitter waters) from the indiscriminate vilifiers of the learned and honourable professors of our noble profession; from the horde of levellers, who can never see any good in Nazareth, we should then greatly prefer the existing order of things—the law in its present integrity, with no other chance of melioration than such as has ordinarily occurred. But we see, even in England, (and certainly not in our country,) no such alternative. We believe consolidation—partial codification—general codification, and finally, an entire remodeling of the existing scheme of jurisprudence, entirely practicable; and in this country, we are aware of no reasons of policy that should occlude the attempt, if not of all at one time, yet of parts, gradually. Having presumed to hope that the present work may fall into the hands of legislators, of statesmen, and lawyers, as well as of students, (for whom it is still mainly designed,) we hope to be excused if we suggest a few remarks, as to the mode in which such codes might probably be formed

1. The existing *Statute Law*, for example, is in part obsolete, or virtually repealed, or actually repealed; is in part, of doubtful or contradictory application, without classification, replete with verbiage; confused, by the blending of numerous precepts of law in one section of the statute, by the use of technicals in an untechnical sense, by vagueness of terminology, &c. &c. The *primary* object, then, of a code of statute law, would be the removal of all these, and of every other imperfection, in the existing volumes of statute law

2. The existing *Judicial Law* is evidenced by books of reports, by manuscript cases, and sometimes by mere oral tradition there are conflicting decisions,—cases expressly overruled, cases virtually overruled, some that are vague and doubtful, some of difficult application, and replete with verbiage; there are also cases of palpable judicial legislation;

some sustained by weak, or no authority, some that have been often questioned, and many ruled an hundred times, &c. &c. The object, then, of a code of judicial law, would be by a process of logical and critical severity, to remedy all of these evils, and to educe from the whole, a clear, well arranged, and well expressed digest of merely expository judicial law

3 The *Unascertained Law*, or that which exists potentially only, (though constituted of actual and relative elements,) arises in part from the yet doubtful meaning of *statutes*, from obsolete, or repealed statutes, now proper subjects for the removal of doubts, and for express revival, in part from the doubtful meaning of *judicial decisions*, now fit subjects of express legislation; from *usages* not yet judicially defined; from the actual absence of all legislation, or judicial decision on many points of a clear and ascertained nature, and equally wise and politic, (many of which points have been suggested, and are often argued with great ability, in various treatises of admitted authority,) from the established, or proposed laws of foreign countries, proper to be incorporated into our jurisprudence, &c. &c. The object, then, of a code of unascertained or potential law, would be to arrange with precision all of such matters, to bring this law now *in posse*, distinctly into view, to clothe it in explicit language; and to accompany the whole with the *motives*, that is with such a course of philosophical and censorial reasoning, based on a well arranged development of principles, and relative facts, as would enable the legislature and the judiciary to perform their respective parts, of converting this potential law into ascertained and expository statute or judicial law. This would be, of course, a temporary code, not of *law*, *stricto sensu*, but of materials only—prepared for incorporation (in whole, or in part,) into one or the other, or partly into both, of the two great codes of statute and of judicial law.

4 The *Statute Law* having been in part judicially interpreted; the whole having been codified in the mode already stated, the *unascertained* law digested—clothed in proper lan-

guage—and finally adopted, in the manner also stated,—the STATUTE CODE would then still require three additions for its final consummation, viz. *first*, every precept of the statutes thus codefied, which has been judicially expounded, should be accompanied by short references to these judicial sources. *Secondly*, the unascertained law, originating in *statute law*, being now codefied in the mode already stated, should be added to, and incorporated in the statute code, under its appropriate head; and *thirdly*, the unascertained law, as far as it is properly referable to judicial law, should be now added by way of reference only, to the statute code, and as judicial law. And if there be yet materials in the code of potential law, not legislatively or judiciously sanctioned, these may be adopted by the legislature, and added to the statute code, under their respective heads, as statute law.

5. The *Judicial Law*, having been also codefied, in the mode stated, and the code of unascertained or potential law prepared, such portions of the latter as have not been judicially sanctioned, but which are still properly referable to the judicial code, might be (for the removal of doubts) legislatively sanctioned, but still (as we have mentioned) carried to the judicial code—thus completing, and keeping separate the two codes educed from the heterogeneous mass of legislation, and of judicial decision, and from the code of potential law, now exhausted and rendered useless, by reason of its materials being adopted, or in part rejected by the legislature or the courts.

6. The two principal codes having been thus completed, would require for their practical execution, the formation of a third code, viz. of the *forms* to be used in every department of the law. The existing *formulae*, with many features of great excellence, are still extremely verbose, and would admit of great curtailment. The formation of a CODE OF FORMS would not prove difficult, especially after the numerous amendments, and great certainty of the law, as remodeled in the new statute and judicial codes.

7. But it may be asked, how are these three codes to be formed, who are to accomplish so great a work? On this subject the reply is evident. The like creative energies, great learning, and untiring industry, as that which raised the great fabric of our jurisprudence, will not be wanting for its reformation, and, with the vast materials existing and at hand, and the analytical powers, and good sense which abound, if impartially selected, the three required codes would soon be extracted from the mass. These codes, if at first, far from perfect, would be still greatly superior to the present system, and would be easily susceptible of continued improvement, as then comprehensive and orderly arrangement, would then peculiarly fit them for such additions. It ought not, however, to be expected, that such a work is to be accomplished without proportionate difficulty; in its nature it is too momentous and valuable, to be gained without commensurate efforts; and there seems to us much wisdom (not inapplicable to our views,) in the conception of Harrington as to the mode in which the Constitution of Oceana, is declared by him to have been formed. From this ideal case we may perhaps extract a useful and practical lesson, as to a mode, if not like, yet similar, for the production of such codes. In that remarkable work, which deserves to be read more than, we fear, it at present is, the learned author, in substance, states that the commonwealth of Oceana obtained its perfect constitution and laws as the result of the deliberations of nine legislators sent as representatives from the commonwealths of Israel, Athens, Sparta, Carthage, Achia, Ætolia, Rome, Venice, Switzerland and Holland, to constitute a Legislative Council. That each was thoroughly skilled in the merits and defects of the government he represented. The proceedings of this august council were opened by an oration pronounced by the Lord Archon, in which he urged the necessity of discarding all fancy and idle speculation in the great work in which they were engaged, and of resorting to the archives of ancient politics, and to every possible source whence they might obtain the requisite wisdom. The coun-

cilors prepared *seriatim et separatim*, their views as to all that was excellent in their several governments—these were deliberately read to the people of Oceana, by a committee selected by lot, which committee, called the Council of Prytans, held their sessions in the Pantheon during several months, so as to receive from the people any suggestions they might make on the views propounded by the Council—and during the session of the Prytans, all objections against the model of the new government and laws, were noted and argued. The Council of Legislators also continued in session, without any disturbance from the people, the Prytans constantly informing the legislators of the people's views. All matters of interest being thus commented on, first by the Legislative Council, then by the People, afterwards by the Council of Prytans, and finally again by the Legislative Council, that council, after much deliberation, extracted from the entire subject what they deemed excellent and practical and thus was formed the model or new constitution and laws of the commonwealth of Oceana; a polity designed by its framers to be immortal, as it was supposed to be as perfect as human means could effect, from the combined wisdom of all ancient and modern prudence, finished and embellished by the cautious reflections of several councils, on their own, and the people's suggestions. Unfortunately, however, this is a beautiful fiction, a *beau ideal* only,—and its result is therefore, duly to be imagined: but it was designed by its learned and patriotic author, for instruction in the practical concerns of legislation; and as such, the Oceana of Harrington, may be read with profit by all who desire to see the cause of reform in the hands principally of wisdom, of virtue, and of learning, but without rejecting the salutary hints and worldly experience of the great body of the people

In the course of the present work, and on other occasions, we have more than once expressed our fear on this subject, and our veneration for that vast science with which we have been so long and zealously engaged. And we believe the pre-

sent volumes are no feeble testimony of our respect for that science, but our love for its excellent materials, and much recent reflection and reading on the subject of codefication, render us the more anxious to see the dross separated from the precious ore. We desire to avoid the narrow views of mere common lawyers, and would be willing to see our Coke and our Fearn, our Chitty and our Starkie, shorn of some of their honours, reduced in volume, refined to their elements, and incorporated with the salutary principles of other codes and of other countries

But if the proposed codes were prepared with all due care, wisdom, and learning, would judicial litigation—legislation—interpretation cease? Would our voluminous libraries become useless, the lawyer's vocation terminate,—long speeches be unknown? would a few volumes be the evidence of all our law? would there be a law for every possible case? Such, and a hundred similar questions are asked by the uninformed. The short reply is, certainly not—no such halcyon results can be promised, no such Utopian hopes are looked for. But, law would certainly become more fixed and certain—courts would find less occasion for invading the province of the legislature, and less for the exercise of their interpretative powers, our libraries would be less often and laboriously consulted, our lawyers less frequently consulted—speeches would be curtailed to some fair proportion, laws would be annually added by the legislature,—principles and laws would be daily applied judicially to cases—and the judge would still continue to apply a clear rule to, perhaps, a hundred cases,—for it is a wholly mistaken idea of a code that it is to contain a rule for each particular case. With all the certainty, and fullness of the best devised code that could be imagined, there would be still room left for argument, for judicial determination, for legislative amendment and addition—and yet the results of a well digested code would be great, and salutary,—operating on the public weal in a thousand advantageous ways, which those alone can anticipate, who know the numerous practical evils

of a tenacious adherence to the numerous defects of existing systems.

But were the codes, to which we have alluded, in full and successful operation, they would still be liable to abuse by the legislature and the courts, and it is also truly said by Filangieri, that changes by mere operation of time in the laws are inevitable; that the best devised codes are subject to this insensible decadence—that all human legislation is temporary and infirm,—and finally, that governments do not perceive the evils, till the people have become restive and have often cried out, and till philosophers also have as often declaimed in their behalf.*

It is readily admitted, that with us, laws are more easily changed, and government is more watchful of the interests of the people, and more alive to the philosophical truth, that laws should conform to the changing habits and views of the people, than is the case with those European nations to which the enlightened Italian, whom we have just quoted refers still, were our laws unexceptionably codified, they would in a short time need some amendment, and perhaps, numerous additions, and these necessities should not only be carefully watched, but the new laws arising therefrom should be executed in the most careful manner, so as to perfectly sort with the existing codes. Here again we refer to Filangieri, who recommends the appointment of a *Censor* for the originating and preparing of all new laws during the recess of the legislative body, and which are to be submitted to it, with such explanatory views as the Censor may deem necessary to make. The novelty of this idea (at least in modern times) ought not to disparage it.

* La decadenza de' Codici è una rivoluzione politica, ma una che si fa lentamente, che cammina con passi quasi insensibili, e che ha bisogno di secoli per giugnere al suo termine. Più, ogni legislazione per ammirabile, ch'essa sia, deve avere i suoi vizi, ed i suoi difetti. Questi sono i compagni inseparabili dalle produzioni umane. Il tempo ce li fa conoscere, ma non è il tempo, che può dissiparli, e che può toglierli. Il governo è quasi sempre l'ultimo ad avvedersene. Distratto dalle altre occupazioni egli non si avvede, nè può avvedersi, che tardi, degli errori della giurisprudenza. In tanto i popoli soffrono, i filosofi declamano, e la legislazione corre a gran passi alla sua rovina.

Filangieri *Della Scienza Legislazione*, tomo 1, 117

Errors in legislation; laws ill assorted and even conflicting,—laws of doubtful import, and full of verbiage, laws of dubious policy; laws founded in fraud; these and others similar, are the frequent results, either of hasty legislation, or of the intrinsic difficulty of a numerous assembly analyzing a complicated and extensive series of enactments embraced in one statute. Questa magistratura, (says Filangieri,) composta da' più savi, e più illuminati cittadini dello stato, potrebbe avere la maggiore influenza su la perpetuità dell' ordine legale. Comincia una legge ad essere in contraddizione co' costumi, col genio, colla religione, colla opulenza, &c della nazione, il Censore destinato alla perpetuità, ed alla conservazione di questi rapporti, farà subito vedere la necessità che ci di reformala: consacrato di continuo alla loro, custodia, istruito dello stato della nazione, attento ad analizzare tutte le causede' disordini, egli sarebbe il primo ad avvedersi degli errori delle leggi. Conosciuto il male, e la causa del male, il rimedio è sempre più facile, e più opportuno.* This is a most plausible, and we think, a very true description of the probable benefits resulting from the appointment of such a magistrate; one whose vocation throughout the year calls upon him to be watchful of the practical operation of all laws, the defects in laws, the proposed modifications in existing laws; to receive the views of others, and to aid them, and the legislature in the preparation of new laws, and in making them harmonize in language, spirit, arrangement, &c. with the existing codes. In order, then, to preserve the three mentioned codes in their purity, and to annually amend and add to them, if need be, a board of legal Censors, composed of a few of the most enlightened and practical jurists, might be constituted, at least for a few years, whose province would be as already stated, and to report to the legislature, *first*, a digest of the last year's legislation (conformably to the plan of the codes) so as to receive a new legislative sanction, as a competent part of the Statute Code. *Secondly*, a digest of all judicial decisions respecting these new statutes, and all the previously codefied

* La Scienza della Legislazione, 1 tom p 118.

statutes, which may have subsequently taken place, so as to be annexed to the Statute Code, in the manner previously stated, *thirdly*, a digest of all other subsequent judicial decisions, to be added in the way of *reference*, in the Statute Code, and *substantively* to the judicial code—and *fourthly*, a digest of unascertained, or proposed law, for the consideration, adoption, modification, or rejection of the legislature; and which, as far as the same shall become actual law, may be at once codified, and transferred to the Statute Code—thus from year to year keeping the two great codes of statute and of judicial law posted up, as it were, and annually sanctioned and promulgated by the legislature. The same remarks would equally apply to the third Code of Forms and Procedures, as far as such matters would require revision, or addition.

In all of these matters there might be no insurmountable difficulties, especially as to the primary elements of the three proposed codes but their secondary elements, derived from the code of unascertained or potential law, would give rise to the principal difficulties, and demand the greatest learning, and the most mature wisdom and consideration. This code, beside its principal object, would of course, embrace the *terminology* of the whole science, much of its *classification*, and much that had been only incidentally sanctioned by the legislature or the courts, in their existing, or once existing statutes or decisions. Still, we believe the difficulty would not be as great, as might, at first, be supposed. There is probably no one branch of law, however extensively treated, that would not be reduced to comparatively a small compass, if from such a treatise we were to extract *first*, the controversies respecting the doubtful interpretation of statutes, now reduced to a certainty by the new Statute Code. *Secondly*, and mainly the dissertations on conflicting judicial authorities, the numerous opinions *tending* to the maintenance of the same point—and lastly the speculative or censorial parts on points then of unascertained law, but which have become either actual and authoritative law, or no longer to be commented on, because

rejected, and refused to be adopted from the code of unascertained law. In addition to all these causes of diminution of the supposed treatise, perhaps some ancient and pervading rule of law, founded on obsolete reasons, has been wholly abolished; and thus terminated the necessity of several chapters on a law now of no more importance than if it had never existed. And in illustration of the foregoing remarks, we would add that the question has been asked, what would you do with Mr. Fearne's masterly treatise on Remainders and Executory Devises. Mr. Butler replies, that 'if it were desired to form a code of the law of contingent remainders and executory devises, it could not, perhaps, be done better than by a statute which should propound, in the form of a code, all the principles and rules of law laid down in Mr. Fearne's Essay, and declare them to be law.'

And he then asks, 'To acquire a knowledge of this code, would it be less necessary, after the enactment of the statute to study the Essay, and the authorities on which it is founded, and to advise with the learned and experienced, than it is at present?'* To this isolated question, and without reference to any other codification beyond that of the doctrine so ably treated by Mr. Fearne, we could give no other than an affirmative reply. But the question, in truth, has very little meaning, and no application to the merits of the codification controversy. Our system would require a wholly different course, and lead to a very different result, as to Mr. Fearne's labours. As the law now stands, the treatise is inestimable. We have studied it with equal wonder and delight, and been much captivated with its symmetry, clear analysis, and appropriate learning. But is not the entire doctrine of these subjects capable of great modification, are not many of its principles now wholly unessential, have not some of its pervading rules grown mainly out of circumstances having no present vital existence, and would it not be quite practicable to remove many of its subtleties, without in any degree affecting the substantial objects of the limitation of landed estates? An affirmative answer to these questions may be found in the

* Butler's Life of Chancellor D'Aguessereu, p. 65

whole history of common law conveyances, of uses, devises, the doctrines of abeyance and *scintilla juris*, of the rule in *Shelly's case*, the rule of perpetuities, of trustees to preserve contingent remainders,—and finally, in that of numerous other cognate topics. The whole of this history abundantly shows the gradual manner in which this artificial, curious, and refined science grew up, and became elaborated into one of the most wonderful systems of law the world has ever known,—and yet, who can assert its actual necessity? Were a new edition of Mr Fearn's great work to be called for, after the completion of the proposed codes, how greatly might it be reduced,—probably from a royal octavo of six hundred pages, to one of scarce a sixth its volume! The statute and judicial law having removed all doubtful and contradictory decisions, a large portion of the discussions of that treatise would prove useless, and, of course, be omitted; the codes have, perhaps, annulled three or four of the prominent rules of real law—and this would eject another large portion from the work. Were the rule in *Shelly's case* alone abolished, as has been recently done in the state of New York, how much refined learning would be consigned to the tomb! And this, we venture to think, could be done every where, with undoubted propriety; it being a merely artificial, positive and useless rule, originating in reasons long since obsolete. The abolition of such a rule, operating prospectively, could be productive of no evil,—nor are we aware of any ground for its continuance that would not be equally obligatory on a colony from either country, transplanted to some uninhabited island, there to frame a code, in which case, we think, the rule in its integrity, might be adopted, or rejected, according to the views of the colonists.

Extensive, complicated, various and refined as is the law of England, we still cannot regard universal codification as a vain and hopeless enterprise. Its intrinsic practicableness may be sufficiently manifest, though a thousand moral, political, and other external causes, might render its accomplish-

ment nearly impossible. We are from principle, and from education wholly averse to all hasty experiments in legal reformations, we venerate the common law, and desire to preserve it from the rude assaults of ignorance and prejudice, and believe there are many reasons of convenience and of policy which recommend a gradual reform, (at least in England) in preference to the introduction of a general code *per saltum*, however well executed such a code may be. On this point we should be actuated a good deal by the spirit (though perhaps, from different causes, and tending to different results) which dictated the following remark of Chancellor Kent 'The English put more to hazard in meddling with their jurisprudence than any other European nation, and they ought to be more jealous than any other, of the spirit of innovation and codefication which are abroad in the land. When a free people have their constitution and system of laws pretty well established, construed, and understood, when their usages and habits of business have accommodated themselves to their institutions, and especially when they are secure in their persons and property, under an able and impartial administration of justice, they ought, above all things, to beware of theory, for 'in that way madness lies.'*

In England, unfortunately, the subject of legal reforms is blended with the excitement of politics, and with the interests of a deeply rooted profession: as long as this continues, such reforms ought to be gradual—to be jealously watched, and most deliberately adopted. In our own country fundamental laws and legal opinions are nearly settled,—and none, of any kind, are so deeply radicated by time, as to claim the veneration due to antiquity, or the indulgence accorded to the prejudices from long use. All that we have to apprehend is, that partial or general codefication may be too hastily executed, be entrusted to incompetent hands, restricted within the narrow limits of mere common-law vision, or marred by mere local knowledge and prejudices. Such undertakings, on the con-

* 1 Kent's Com 487.

trary, should be entrusted to scholars in the law,—to experienced practitioners; to those who have studied the philosophy of law in general; to those who have mastered the subject of codification in all countries, to those who have been disciples of Justinian as well as of Coke, and to those, finally, who come to the task with all requisite wisdom, learning, zeal, and industry. To American statesmen, lawyers, and jurists, the subject is certainly full of interest, for, though much has been done to amend and simplify our schemes of jurisprudence, much remains to be done, and it were better they should remain, for the present, as they are, than to entail on posterity, under the name of codes, and amended laws, crude and ill arranged materials loaded with a thousand contradictions, obscurities and imperfections, the consequence of hasty and inadequate means, and of the absence of those enlarged views which should alone attend such enterprises. It is with nations as with individuals, as the transactions of life increase, rules for their regulation must be multiplied, and the object of a code is to define, to simplify, and arrange these rules,—and the necessity for a code would seem to increase in the ratio of the increase of the individual and national transactions in a state. That a nation in its maturity may have its laws codified, we find from the Justinian, Napoleon, and other codes, for though the term codification, and the existing controversy respecting its objects, be modern, and may be said to have originated with Mr. Bentham, codes themselves are of great antiquity. The student, in order to comprehend fully the real merits of the controversy respecting codification, must not confound the arguments used in various countries, but carefully investigate the history and objects of the controversy as it exists on the continent, in England, and in our own country; since there are reasons for and against reforms somewhat peculiar to each, and which have influenced their advancement, or retardation, their general, or partial adoption. These peculiar and local causes should be so distinctly known as to be correctly applied, and not indiscriminately, as is so

often the case. In investigating the history of codefication on the continent, the student will not fail to become duly informed of the origin, history, and characteristics (especially as to the question of reforms) of the four *schools* or legal *sects* under which most of the continental jurists have arranged themselves—these we have not time to remark on further than briefly to enumerate them. 1 THE PRACTICAL SCHOOL, as to which the student will note its subdivision into two parties, the extent to which they favour codefication; the errors, in this respect, of each party. 2 THE PHILOSOPHICAL SCHOOL, why it favours codefication, its merits in this respect, and its demerits, or ultraisms. 3 THE HISTORICAL SCHOOL, why it is unfriendly to codefication, in what respects it agrees with or differs from the practical school, its great utility in encouraging historical inquiries, but its ultraism as to their application and 4 THE LEGISTIC, OR JUDICIAL SCHOOL, why friendly to positive law, and to its letter, how essentially it differs from the practical school—how from the philosophical school, especially as to the sources of the amendment of laws; and how it agrees with it in respect to depriving the courts of the exercise of legislative and interpretative powers, again, how it differs from the historical school in its application of facts as a source of legislative amendments—and finally, the extent, though limited, to which it has favoured legal reforms. The student, also, when thus engaged, will pay special attention to the *authority* which is accorded to the opinions of distinguished jurists as a source of law, and examine its historical deduction from the like authority accorded by the Romans to the opinions of their great legists, and here he will remark the difference, in this respect, as to the British and American doctrine, from that of the continent

In investigating the subject of Codefication in England, he will also attend to its political character, the vastness of the contemplated changes compared with what are required in this country, where departures from the common law have been gradually taking place for nearly two centuries; the force

of long established usage, the veneration paid to antiquity, (so different from our country, where all is new, and the philosophical characteristic of the people, in every pursuit of life, bids them to welcome any change that promises to be salutary,) and finally, the immense power of the legal profession and its numerous retainers, who see, or imagine that they see, ruin to their vocation, as consequent on the proposed changes. These inquiries being carefully and dispassionately made, must, we think, result in the conviction that whatever may be decision of wisdom, or of policy in the old world, the government, the people, and the legal profession of this country, have nothing to fear from Codification. We close this Division of our subject with the promised enumeration of the principal Sources on the subject of Codification and Amendment of laws.

SOURCES ON THE SUBJECT OF CODEFICATION, AND THE AMENDMENT OF LAWS

[These sources we have arranged, somewhat chronologically, under the three heads, viz British, American, Continental, and with reference also to the larger divisions of the subject—such as Chancery Reform, Real Property Reform, Reforms in Criminal Law, Reforms in Practice, Pleading, &c. Under these heads the student will find, not only the more important treatises, essays, proposals, and reviews of the same, in respect to codification—but the titles of the principal Codes, Consolidations, and Amendments, which have gone into actual operation.]

I. BRITISH.

- 1 Lord Bacon's Proposition for Compiling and Amending the Laws—Offer of a Digest of the Laws—Ordinances in Chancery for the better administration of Justice in the Chancery Court. Vide *Bacon's Law Tracts*, London, 1741.
- 2 Lord Hale's Considerations touching the Amendment of Laws. Vide *Hargrave's Law Tracts*, p 249
- 3 Norburie on the Abuses and Remedies of Chancery. *Harg L Tracts*, p 425
- 4 Sheppard's Essay, entitled England's Balm, or Proposals for the Regulation of the Law, and better Administration of Justice. London, 1651
- 5 Bentham's Works—*passim*,—and especially his Codification Proposal addressed to all Nations—his Letters to the Citizens of the United States, and his Rationale of Judicial Evidence

- 6 Sir Samuel Romilly's Objections to the Project of creating a Vice Chancellor, 1812
- 7 Montague's Selection of Opinions on the Punishment of Death. *London*, 1812,
3 vols
- 8 Montague's Thoughts on the Punishment of Death for Forgery *London*, 1830
- 9 Miller's Inquiry into the Present State of the Civil Law of England *London*,
1823 *
- 10 Byles' Discourse on the Present State of the English Law *London*, 1829, p 42
- 11 Twiss' Inquiry into the Means of Consolidating and Digesting the Laws of Eng-
land. *London*, 1826, p 82
- 12 Butler's Memoir of D'Aguesseau Chapter the sixth *London*, 1830
13. Uniacke's Letter to Horace Twiss, Esq in reply to his 'Inquiry,' &c
- 14 Uniacke's Letter to the Lord Chancellor on the Necessity and Pracucability of a
Code
- 15 Mr Brougham's Speech on the Present State of the Law *Feb* 1828†
- 16 Lord Brougham's Speech in the House of Peers, Dec 1830, on the Bill to reform
the Legal Abuses of the Country ‡
- 17 The Province of Jurisprudence Determined, by John Austin *London*, 1832
- 18 Thomas' Treatise on Universal Jurisprudence *London*, 1829
- 19 Dodd's Letter to Mr Peel on some of the Legal Reforms proposed by Mr
Brougham, 1828
- 20 Reports made to the House of Commons by the Committee appointed in 1811, to
inquire into the Causes that retard the decision of Suits in the High Court of
Chancery
- 21 Parliamentary Proceedings as to the Court of Chancery, &c by C P. Cooper
London, 1828, 1 vol 8vo. p.p 436 ||
- 22 Lettres sur la Cour de la Chancellerie, et quelques points de la Jurisprudence
Angloise, par M C P Cooper, Avocat Anglois *Londres*, 1828, 1 vol 8vo
p p 354
- 23 Parke's History of the Court of Chancery, with a view to Amendments *London*
1828 §
- 24 Parke's Equity Jurisdiction of North America *London*, 1830.
- 25 Sugden's Acts relating to the Administration of the Law in Courts of Equity,
passed 2 George IV. and 1 William IV with Notes by W Jemmett *Lon-
don*, 1830—vide also 4 Vol. Law Magazine, 409.

* See Review of this work, 1st vol *London Law Magazine*, p 32, 185

† Vide Review of this Speech, 2d vol. *English Jurist*, p 1

‡ Vide Review of this Speech, 5th vol *Law Magazine*, p 1

|| Vide Review of this work, 2d vol *English Jurist*, p 81, and 1st vol *London Law
Magazine*. p 349

§ Vide Review of this work, *English Jurist*, vol 1, p 446

26. Parke's *Contre-Projet* to the Humphreysian Code, and to the Projects of Redaction, by Messrs. Hammond, Unacke and Twiss. *London*, 1828.*
- 27 Wellesley's View of the Court of Chancery *London*, 1830
- 28 Jones' Suggestions for a Reform in the Court of Chancery *London*, 1834
- 29 Dr Reddie's Letter to the Lord Chancellor—Mr Humphrey's Reply to the same and to Mr Cooper †
- 30 Humphrey's Observations on the State of the English Law of REAL PROPERTY, with the Outline of a Code *London*, 1826 ‡
- 31 Haye's Letter to the Right Hon R Peel on the Law of Real Property *London*, 1825, p p. 48.
- 32 Haye's Popular View of the Law of Real Property, in reference to a General Registration. *London*, 1831.
- 33 Beaumont's Observations on the Code for Real Property, proposed by James Humphreys, Esq. *London*, 1827, p p. 77
- 34 Remarks on the Expediency of Framing a New Code of Laws for Real Property, by a Barrister of the Inner Temple *London*, 1827, p p. 45
- 35 Dixon's Observations on the proposed New Code, relating to Real Property *London*, 1827, p p. 59
- 36 Swinburne's Strictures on the Conduct and Competency of the Real Property Commissioners *London*, 1831, p p. 12
37. Swinburne's Letter to Mr Peel, respecting the English Law of Inheritance *London*, 1827, p p. 64
38. Reports of the Commissioners on the Amendment of the Law of Real Property, 2 vols 8vo.
- 39 Mewburn's Observations on the Second Report of the Commissioners on Real Law *London*, 1831 ||
40. Cooper's Notes respecting Registration, and the Extrinsic Formalities of Conveyancing *London*, 1831.
- 41 Hammond's Digest and Consolidation of the Law of Forgery, 1823, enlarged 1806
- 42 Alphabetical Arrangement of Mr Peel's Acts, 12mo
- 43 ~~67~~ The following *Articles* in the *London Jurist*, 1827, 1828, *Vol. 1*, *Art I* 'On the New Criminal Code,' p 1 *Art. II* 'Progress of Jurisprudence and Codification in the United States,' p 22 *Art IV* 'On the Consolidation of the Bankrupt Laws,' 6 Geo. IV. ch 16, p. 51 § *Art VII* 'Proposed Alterations in the Courts of Common Pleas and Exchequer,' p 91, also, 'Parliamentary Proceed

* Vide Review, 1st Vol. Law Mag p 613

† Vide Review of these, *London Jurist*, 2d Vol p 125

‡ Vide Review of the same, 1st Vol Law Mag p 613

|| Vide Review of the same, 5th Vol. Law Mag p 181

§ Vide also *London Law Mag Vol 1*, p 64

ings and Papers,' p 131 to 151, and p 305 *Volume 2*, Art III 'Codification in the United States,' p 47 Art IX 'Review of the New Ordinances in Chancery,' p. 137

- 44 Juridical Letters by Eunomus, addressed to Mr Peel on the Subject of Law Reforms *London*, 1820 *
- 45 ~~§~~ The following Articles in the London Law Magazine—*Volume 1*, 'Principles and Practice of Pleading,' p 1 'Reforms in Chancery,' p 32 'On Lord Lansdown's Act for Consolidating the English Statutes relative to offences against the person,' p 129 'Abstracts of recent Statutes,' p 168—426 'Practice of Courts,' p 185—454 'Reforms in Chancery,' p 349 'Codification Controversy,' p 631 'Queries on Pleading,' p 672 *Volume 2* 'On the First Common Law Report respecting Practice in the Superior Courts, Feb 1829,' p 131 'Abstracts of recent Statutes,' p 207 'Proposed Forms of Process,' &c p 211 'Codification Controversy,' p. 227 'Letter on Mr Humphreys,' p. 230 'Proposed Amendments to the Law of Arrest for Debt,' p 311 'Propositions of the Real Property Commissioners,' p 449 'Report of the Real Property Commissioners, May, 1829,' p 597 *Volume 3* 'Real Property Report Continued,' p 1 'On the Second Report of the Commissioners, respecting the Practice of the Supreme Courts,' p 396—(See above *Volume 2d*) 'Abstract of Recent Statutes,' p 578 *Volume 4* 'Abstract of Recent Statutes,' p 220—487 'On the Second Real Property Report, June, 1830,' p 247 *Volume 5* 'Registry Question,' p 81, 190, 198. 'Abstract of recent Statutes,' p 247, 505, 519 *Volume 6* 'Law Reform in America,' p 127 'New Rules and Forms of Practice,' p 225 'Queries Respecting Imprisonment for Debt,' p 235

II AMERICAN

- 1 Sampson on Codes and the Common Law *Washington*, 1826, 1 vol 8vo p p 202
- [~~§~~ William Sampson, Esq of New York, was the first in our country to fix public attention on the subject of legal reforms. In this cause he laboured assiduously for many years, with a more than Bentham zeal, and may justly be regarded as the great promoter of the legal amendments, the codes, and consolidations that have so far taken place among us. His invectives, however, against the Common Law, were often injudicious and indiscriminately severe, and his love of ridicule frequently took the place of prudence, of reason and of useful learning. In the above volume (a miscellany which gives a tolerable view of Mr Sampson's exertions in this cause,) will be found—1st, an Oration, 2d, a Review—each setting forth in high relief the refinements, absurdities and antiquities of the Common Law, and the evils in the practice of the English

* Vide also Law Mag Vol 3, p 389—Vol 5, p 174

Courts—all of which, he contends, have exerted a very prejudicial influence on our own jurisprudence, 3d, a Series of Letters on the Subject of Codification, which passed between him and *Dr Cooper*, of South Carolina, *Charles Watts*, Esq of New Orleans, *Governor Wilson*, of South Carolina, *Judge Workman*, of Louisiana, *George Bibb* and *A Talbot*, Esquires, of Kentucky, and other collaborators in the cause]

- 2 Grimke's Address on the Practicability and Expediency of reducing the whole Body of the Laws of South Carolina to the Simplicity and Order of a Code 1827, p p 31
 - 3 Sampson's Letter to M Dupin, of Paris, and M Dupin's Reply, April and June, 1826 *
 - 4 Speech of the Hon J L Wilson in the Senate of South Carolina, on the Expediency of a Code *New York*, 1827, p p 44
 5. Report of the Senate of South Carolina, on the Subject *Columbia*, 1827
 - 6 Report of the Revisers of the Laws of the State of New York, November, 1827
 7. New York Code, or Revised Statutes, 1829, &c.
 8. ~~Q~~ The following Articles in the American Jurist —Vol 1 Art VI p 310—'On Mr Brougham's Speech on the Present State of the Law' Vol 2 Art V p 79—'Proposed Amendments of the Law as to Damages on Bills of Exchange Vol 4 Art. I p 1—'Reforms in the Criminal Law of England' Vol 5 Art II p 23—'Written and Unwritten Systems of Law' Vol 6 Art VII p 104—'Larceny accompanied by Breach of Trust' Art. VIII p 116—'Proposed Insolvent Law of Massachusetts' Vol 7 Art IX p 80—'Improvements in Pleading' Art III p 298—'Improvements in Pleading and Practice' Vol 9 Art I p 1—'Written and Unwritten Systems of Laws' Art II p 289—'Legal Reform' Vol 11 Art II p 289—'Imprisonment for Debt' Vol 12 Art I p 285—'The alleged Uncertainty of the Law' Vol 13 Art VII p 314—'Revision of the Laws in Massachusetts'
- [*All of the foregoing Articles (but particularly the last) are eminently entitled to be carefully read, and cannot fail to present to the reader a clear view of the present state of Law Reform in the United States*]
- 9 The Massachusetts Code [*Not yet promulgated*]
 10. Livingston's Introductory Report to the Code of Prison Discipline, prepared for the State of Louisiana *Philadelphia*, 1827 System of Penal Law for the United States, 1 vol fol *Washington*, 1828 Penal Code of Louisiana *New Orleans*, 1822 †

* Vide English Jurist, 1828, vol 2, p 55

† Vide ante p 439, also 6th vol Westminster Review, p 58, and North American Review, vol 17, p 242

III CONTINENTAL.

- 1 Code Justinian Vide ante p 188, 489, 500, 520
- 2 Codo Les Cinq *Paris*, 1823
- 3 Les Six Codes, avec notes et traités pour servir à un Cours de droit français, à l'usage des étudiants en droit *Paris*, 1829, 12e annotés par M Sirey, 1816
5 vols 11o
- 4 Code Civil expliqué, par M Rogron *Paris*, 1830, 1831
—— par demandes et réponses, avec explications, par M Carré, 1829,
3 vols 8vo
—— contenant l'explication de chaque article, &c par M Villemartin, 1829
—— par M Frenet, 1825, 15 vols 8vo
- 5 Code de Commerce, annoté, par M Sirey *Paris*, 1820
—— Commentaire par M Fournel, 1808, par M Pardessus, 1831, 5 vols 8vo
—— Questions sur le Code de Commerce, par M Horson, 1829, 2 vols
—— Translated into English by John Rodman, with able Notes, 1811, 1 vol
- 6 Code de Procedure Civile *Paris*, 1816
—— Commentaire, par M Pouclet, 1827—annoté par Sirey, 1819, expliqué, 1830
- 7 Code D'Instruction Criminelle, par M Carnot, 1819—Bourgnegnon, 1821
- 8 Cuerpo de Leyes—Columbian Code, translated *London*, 1823, 1 vol 8vo
- 9 Code Henri, 1812, 1819, 8vo *
- 10 Code Noir Projet pour les Colonies *Paris*, 1829, 4to
- 11 Code Brazilian *Lisbon*, 1819, 3 vols
- 12 Code Prussian—Code Général pour les états Prussiens, traduit par M M Bosselard, Weiss et Lemierre, 5 vols 8vo *Paris*, 1791 [The Prussian Code commenced in the reign of Frederick II the task being entrusted to the eminent lawyer, Coccoeus, who completed it in 1751, in 3 vols 8vo But this Cod fell into disuse, and must be distinguished from the present one, commenced in 1780, by the Chancellor Von Carmer, under the charge conferred on him by Frederick, but which was not promulgated till the succeeding reign of Frederick William, in June, 1791, under the name of *Allgemeines Landrecht* To this have been subsequently added, even to the present day, many valuable additions

* There are two codes under this name—the first was promulgated towards the close of the sixteenth century, by Henry III digested by M de Brisson, a most enlightened lawyer, after the manner of the Justinian code It is highly spoken of by Chancellor D'Aguesseau, 'Comme un modèle à suivre dans une réforme générale des lois' The second code of this name is the one promulgated in 1812, by Henry I of Hayti, and is a digest after the plan of the Code Napoleon The portions which we have seen of this Code are very creditable, and the whole is highly spoken of, and is said to be admirably adapted to the situation of that people

It has been learnedly commented on by Von Strombeck, *Leipsic*, 1821, 2 vols also by Gravelle, *Erfurt*, 1824, 1826, by Fischer, *Breslau*, 1824, and by Biehlz, *Erfurt*, 1825. In 1815, the celebrated Charles Von Savigny made an indirect attack on this great Prussian Body of Law, till then regarded as the *beau idéal* of Codification. But Von Savigny belongs to the strictest sect of the Historical School, which is opposed to all codes. He, however, does full credit to the ability and great care with which the Prussian Code was prepared. It has been recently translated into English, under the following title—'On the Aptitude of the present Age for Legislation and Jurisprudence.' Von Savigny's pamphlet is entitled, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft*, and is in reply to a pamphlet of Mr Thibaut, of Heidelberg, who in his pamphlet, published in 1814, entitled *Ueber die Nothwendigkeit eines allgemeinen bürgerlichen Rechts für Deutschland*, proposes the formation of a General Code for all Germany, to be prepared by an assembly of the most enlightened jurists. The greatest lawyers of Germany took sides in this controversy, and Savigny had the good fortune to find in his ranks Hugo, Eichhorn, Goeschen, and others.]

- 13 Code Austrian.—[The Emperor Joseph II shortly after he came to the throne in 1780, promulgated a Code much more complete than the system established with some care by his distinguished mother, Maria Theresa. By this code capital punishment was abolished. Whatever were its merits or defects, it seems to have been unsuited to the times, and was wholly abrogated by his successor. On the 1st of January, 1801, a general penal code went into operation, and on the 1st of July, 1811, a new civil code was promulgated—which was extended in the following year to the Italian provinces, and officially translated into that language in 1815, in 1 vol 8vo. Vide Gustermann's *Pratique du droit privé de l'Autriche*. Vienne, 1823, 2 vols 8vo also, Dolim's *Memoirs*, which throw much light on the Emperor Joseph's views as to government, and reforms in the laws.]

- 14 Code Russian.—[Peter the Great contemplated a consolidation and methodical arrangement of the Laws for his Empire, but nothing effectual was done. The Empress Elizabeth also promoted the same desirable object, but with as little success. These were followed up by Catherine II in her 'Grand Instructions to the Commissioners appointed to frame a New Code of Laws for the Russian Empire'*. In furtherance of this desire to amend and codify their laws, a correspondence was opened in 1804, between the Legislative Commission estab-

* Vide M Tatischeff's translation from the Russian. London, 1768, 4to. See also Ordinances of Catherine II for the government and administration of Russia, translated from the Russian into German, 1776, 1 vol 4to.

lished at St Petersburg, and some of the most distinguished jurists of all countries, and in 1815, the Emperor Alexander addressed a letter to Mr Bentham, which was followed in 1826, by one from the Emperor Nicholas to our distinguished countryman, Mr Livingston, each seeking light on the subject of the amendment and arrangement of laws [F] The Russian law is now divided into two great divisions—first, the Ancient Laws, comprising all prior to the year 1649—and secondly, the Modern Collection, which embraces all laws from 1649 to 1830, in 43 vols 4to]

15 Code Marillac, 1629—Vide Abrégé de l'Histoire de France, par M Hénault, tom 2, p 657

16 Code Civil and Criminal of Sweden [This was adopted in 1734, and is divided into nine parts, viz of Matrimony, Successions, Agriculture, Buildings, Commerce, Criminal and Penal Law, Seizures, Executions, Courts]

17 Code Legal of Spain, entitled Novissima Recopilacion de las leyes de España, dividida en xii libros Madrid, 1805, 3 vols fol [Vide Don Marina's Critical Views upon this Code Madrid, 1820, 1 vol 8vo He is also the author of another work of high authority, entitled an Historical Essay on the Code of Laws de Las Siete Partidas]

18 § The following Articles on Codefication in the Thémis, ou Bibliothèque du Juris consulte

VOL 4, p 391 'Proposition d'un Code général et complet, par Jérémie Bentham' Londres, 1822

VOL 5, p 116 'Nouvelles relatives à la promulgation de nouveaux codes'

VOL 6, p 53, 288 'Sur le nouveaux Code Civil du royaume des Pays Bas'

—— p 377 'Plan d'une collection des lois maritimes anciennes'

VOL 8, p 256 'Notice sur la confection de nouveaux Codes en différents Etats de l'Europe et de l'Amérique'

VOL 9, p 180 'Tableau chronologique des nouvelles législations criminelles, et de projets de Codes, ou lois criminelles, depuis 1786 a 1828'

—— p 201. 'Exposé historique du projet de Code pénal pour le Royaume des Pays-Bas'

—— p 361. 'De la Codefication, &c'

VOL. 10, p 1, 42 'Exposé historique du projet du Code pénal pour le Royaume des Pays Bas'

—— p 55. Tableau comparatif des opinions des membres de la 2^e chambre sur le système du projet de Code pénal, 1827

—— p 352 Droit Ecrit et coutumier. [Review of M de Savigny's pamphlet in reply to Mr Thibaut, and of Dr Reddie's Letter to the Ld Chancellor]

19 Gaetano Filangieri—La Scienza della Legislazione Genova, 1798, 8 vols 8vo

- 20 Proyecto de unCodigo Penal, par M L Vidaurre. *Boston*, 1928, 1 vol 8vo.
- 21 Plan d'un Code général progressif, par A de Courdemanche, 1828
- 22 De la Codification en général, et cettè de l'Angleterre en particulier *Amsterdam*, 1830.
- 23 Esprit, origine et progrès des institutions judiciaires des principaux pays de l'Europe, par M Meyer. *Paris*, 1825, 5 vols 8vo
- 24 Des Institutions Judiciaires de l'Angleterre comparées avec celles de la France, et de quelques autres Etats anciens et modernes, par J Rey *Paris*, 1826
- 25 Dei Difetti della Giurisprudenza da Muratori

[We have made the foregoing selection with great care from a vast mass of similar productions, which the philosophical spirit of our age has given to the world. We do not doubt the salutary tendency of such works, not only to improve the laws of the countries to which they are particularly addressed, but to meliorate the condition of the human race, to dispel prejudices, remove peculiarities, to enable us to compare the merits and defects in the laws of all countries—and finally to produce throughout the world such a similarity of laws and of institutions as will favour intercommunion, diminish national jealousies, lessen the causes of war, and prepare the human family, if not for one religious and political faith, at least for such an approximation, as will greatly enlarge the sphere of reciprocal usefulness, and of national and individual enjoyment. Such works cannot be examined without enlarging the mind,—giving to legislation and judicial decision an expanded vision, much beyond the technical and narrow limits of a single code, they inculcate certainty, method, utility, relinquishment of prejudices, or finally, *reform*,—but not idle innovation, and with this view only is it that we recommend them to the students, lawyers, legislators, and statesmen generally of our country, many of whom, as we know, are scholars in these subjects—but to the other numerous class who have been differently occupied, we venture to hope our recommendation will not be disregarded, and that these sources and all others that appertain to wise legislation, will be more generally and carefully studied.]

DIVISION VI

There is a kind of medical knowledge, which is not so much concerned in the cure of diseases, as in the detection of error, and the conviction of guilt — *Farr's Medical Jurisprudence*

No one should commence the practice of the profession, either of medicine or of law, without a knowledge of Medical Jurisprudence — *Forsyth's Med. Juris*

MEDICAL JURISPRUDENCE.

THE just application of physical truths for the illustration and establishment of legal duties and liabilities, has been denominated Medical Jurisprudence—or Forensic Medicine, from the want (we presume) of a more expressive and comprehensive name. It is manifest, however, that the subject extends beyond the admitted boundaries of *medical* science,—and seeks its lights also, from every department of physics, and of psychology, as distinguished from ethics and law. The intimate and indissoluble relation subsisting between these cardinal divisions of human knowledge, is much insisted on by the author, in the initiatory chapters of a former work,* little to the taste, however, of American readers; some of whom seem to cherish no small incredulity as to this alliance; and are inclined to undervalue the alleged connections and dependencies of law on physics and metaphysics, which it was the author's earnest endeavour to establish, and in which he feels assured he is sustained by the opinions of the most learned and practical jurists of all ages, and of all countries. Regarding, then, medical jurisprudence (*lato sensu*) as the connecting link between our peculiar science, and those which treat of matter and of mind; we shall adhere to our previously expressed opinions, under the hope and belief that, in time, a more just sense of the value of these studies to the lawyer and statesman, will be established, and that we shall be vindicated from the charge of having extended our views much beyond the true, and practically useful limits of jurisprudence.

By medical jurisprudence we mean, such a knowledge of physics and of mental philosophy, as will enable legislators to enact, courts to expound, and lawyers to comprehend and

* Vide Legal Outlines

safely apply laws for the preservation of life, and of health, and to discover their violation (civil or criminal,) as far as such laws are dependent upon physical, or metaphysical truths.

It is a sound maxim of reason, adopted by law, that *cuiuslibet in arte suâ perito est credendum*. Hence, legislators, courts, and lawyers are often obliged to resort to the evidence and opinions of those who have made physics and mental philosophy their peculiar study and it is very clear that this can be done with assurance of correctness, only when the *examiners*, as well as the *witnesses*, are in some degree enlightened on such subjects. It is, indeed, scarce possible, nor is it necessary for the lawyer to be very learned, either in physics, or psychology: he need be neither a Boerhaave, nor a Stewart but, unless he has made some acquaintance with the outlines, at least, of these sciences, he cannot be an efficient and safe adviser in various departments of law, however apt and practical he may be as an attorney. Whether the subject under consideration be viewed as medicine applied to law, or law applied to medicine, it is equally the province of the legislator, of the court, or of the advocate to see to its just application. But, in truth, it is an appeal by law to medicine; and as such, has been usually treated rather by the physician than the lawyer, and therefore may be regarded mainly as medical responses to legal interrogatories: still the result must ever be the same, the questions can neither be propounded, nor the answers be well understood, unless the recipient, as well as the giver, have some community of knowledge, not of law, but of medicine in its largest sense. Most of the sciences and arts have some cognation, some ties of union; but here the ligaments seem to flow from the moral to the physical science, and none from the latter to the former in medical jurisprudence law is illustrated by medicine, whilst the latter receives no illustration whatever from the former.

Medical jurisprudence is by no means applied exclusively to the vindication of criminal or penal laws, but is often eminently useful in merely civil causes. These civil actions sometimes involve questions of anatomy, of physiology, therapeutics, materia medica, pharmacy, obstetrics, chemistry, the

skilful practice of medicine, the doctrines of hygiene; and, indeed, of every branch of the physician's vocation. Drugs, for example, are sold in violation of a warranty, express or implied, of their quality, manufactures are established, which vitiate the atmosphere; food, or articles of luxury are vended, which contain some deleterious ingredient; controversies arise in insurance causes respecting spontaneous combustion, self-murder, &c. In these, and a thousand similar cases, the physical sciences must be invoked, and how are such matters to be disposed of, if the elements, nay the very terminology of these subjects, be wholly unknown to the lawyer? The first trial of a civil cause we remember to have witnessed, arose on the sale of a quantity of gum tragacanth. We were forcibly struck with the many pertinent questions propounded by one of the counsel, who evinced a familiar acquaintance with various articles in *materia medica*, with the laws of chemistry; the tests of gums and of resins; the nature of solubles and of insolubles,—and finally, with the entire subject, in whatever pharmaceutical, or other aspect his case could be placed. We regretted, however, to learn that the distinguished jurist, to whom we allude, had in early life been educated to a different profession—medicine. But in a much more recent case, in an action on a rail-road contract, we were gratified to see able engineers examined with critical learning, and perfect familiarity with the subjects, by more than one of the counsel. Such ought to be the ability (and, if possible, in every department of science,) of every lawyer who aims at the highest honours and emoluments of his profession.

There seems to be some intrinsic difficulty in executing a masterly treatise on medical jurisprudence. It should aim at nothing beyond the elucidation of doubtful legal questions, by the principles and practice of the different branches of physics. If it be written by a physician, it is apt to be defective in three respects—first the vanity of legal authorship prompts to a too extensive, and necessarily crude, display of legal knowledge—secondly, a want of extensive acquaintance begets not only erroneous statements in law, but much that is absolutely irrelevant—and lastly, familiarity with his own

science induces too much technicality and display of learning on physical topics,—so that erroneous and inapplicable law uniting with recondite and pedantic physics, render the work unprofitably dull. If, on the other hand, it be the production of a lawyer, it may escape the pedantry, but will scarce avoid most of the corresponding defects. A perfect treatise, then, on this subject, is to be looked for only from him who is equally eminent in both the sciences,—and as this is highly improbable to occur, the nearest approximation would be where the author, originally destined for the medical profession, or having practised therein, has, from those supervenient causes which sometimes take place, become eminent at the bar, which circumstance would have eminently qualified Sir James Mackintosh, in after life, for such authorship, had not his brilliant talents and varied learning, and sound sense, been greatly marred by that characteristic infirmity of purpose, and want of persevering industry, which rendered his life full of splendid promises, and of vexatious disappointments. To this double education, however, is it that Mr. Chitty was enabled to prepare his recent valuable treatise on medical jurisprudence. Some have stated, however, that the medical part of this work was furnished by gentlemen of that profession, and the legal part only by Mr. Chitty, (as was the case in the work of Messrs. Paris and Fonblanque;) be this as it may, it is among the most valuable that has yet appeared, though not entirely exempt, we think, from the objections to which we have just alluded. All of the treatises, indeed, in all languages, as far as we have looked at them, seem to err from the inadequate knowledge of medicine in the lawyer, or of the legal science, in the physician, and, from the too natural desire of each to deal *learnedly* with topics foreign to his peculiar profession.

Mr. Forsyth, in his *Synopsis of Modern Medical Jurisprudence*, one of the most recent works on the subject, has indulged, in his initial chapters, in too much display of legal learning, and much of which is altogether inapposite. Many of the legal topics are necessarily known to every lawyer, and need not be known by any physician, being essentially without the scope of medical jurisprudence. We advert

more particularly to this work, as the author seems to have been aware of the objection to which we allude, in respect to the works of others,—and hopes he has avoided it in his own. A few examples, however, from perhaps as many hundred will illustrate sufficiently our remarks, and manifest the difficulty of avoiding it. ‘If a man,’ says Mr. Forsyth, ‘kills another in the act of adultery with his wife, and kill him on the spot, this is manslaughter only.’ ‘He who kills another, though at his own desire, is a murderer.’ ‘No part of the personal estate of a *felo de se* is vested in the king before inquisition.’ ‘A corpse cannot be arrested for debt,’ &c. &c. None of such isolated legal matters are within the province of medical jurisprudence,—the lawyer should know all this before he looks into a book on legal medicine, and a physician has no concern with them,—as they never can shed any light on, or give rise to any question in medical jurisprudence. This objection would be of small moment, were the irrelevant law confined within narrow limits—but, as such legal matters so often form a large portion of the volume, we naturally desire to see a treatise philosophically restricted to the exact objects and boundaries of the subject—a work which could not fail to supersede the many thousand volumes in all languages, now to be found on this interesting collateral branch of legal education *

We close our remarks on this subject with briefly observing, that questions of the highest responsibility and of the greatest delicacy are often dependant for their solution on a mixed reference to cerebral physiology, and mental philosophy. Actions of the most shocking nature are sometimes committed, seemingly without motive, in apparent opposition to exertions made by the unhappy perpetrator, who seems influenced by a species of impelling necessity, and by those too who had been consi-

* The extent to which legal medicine, (including medical police under that comprehensive expression) has been cultivated on the continent, is either ludicrous or sublime, we cannot say which. Wilberg, in his *Bibliotheca Medicinæ Publicæ*, enumerates nearly 4,000 works. Dr. Smith considers his catalogue as defective, and that if the works average only two volumes each, Wilberg’s list, up to the year 1819, will amount to 9,986 volumes! which, great as it is, Dr. Smith considers short of the truth. It is probable that up to the year 1836, the volumes published on this subject, in all countries, does not fall short of 12,000!”

dered both intelligent and moral. These anomalies have been treated under the head of *Homocidal Insanity*, and in France under that of *Monomarié meurtrière*. So again, the passions and affections are sometimes suddenly deranged, and the whole moral character becomes grossly perverted and debased, leading to actions utterly at variance with the agent's former character. This has been treated under the name of *Moral Insanity*. It would be impossible, for court or counsel to deal with cases of either class understandingly, unless they have some acquaintance with the extraordinary facts which have been collected and commented on by such writers as *Simpson*, *Combe*, *Prichard*, *Pinel*, *Georget*.*

✂ We now offer to the student, and practising lawyer, a list of the most approved British, American, and Continental works on the subject of Forensic Medicine, in all of its departments. On this subject we prescribe no particular course of reading to the student, but submit nearly all of the best known and most approved works that have been written,—leaving to him the selection of a few volumes to be carefully studied,—and the rest for occasional examination, and for such researches as a future extensive practice may from time to time require.

WORKS ON MEDICAL JURISPRUDENCE

I. BRITISH.

- ADAMS, Joseph. Essay on Hereditary Peculiarities
 ABERCROMBIE. Treatise on the Intellectual Powers
 BARTLEY. Treatise on Forensic Medicine, 1815, 8vo
 BLANE. Elements of Medical Logic.
 BROWN. Physiology of the Human Mind
 BURROWS. Commentaries on the Causes, &c of Insanity. London, 1828
 CONOLLY. Inquiry concerning the Indications of Insanity. London, 1830, 8vo †
 COMBE. Observations on Mental Derangement. Edinburgh, 1831, 8vo
 CHITTY, Joseph. Practical Treatise on Medical Jurisprudence, London, 1832, American edition, with Notes. Philadelphia, 1835
 FARR, Samuel. Elements of Medical Jurisprudence, 1787, 3d ed. 1815, 12mo
 FORSYTH. Synopsis of Modern Medical Jurisprudence. London, 1829, 8vo
 FEARNE. Manual of the Physiology of Mind, 8vo
 FERRIAR. Theory of Apparitions, 8vo
 FYFE. Reciprocal Influence of Body and Mind, 8vo.
 HASLAM. Medical Jurisprudence as it relates to Insanity, according to the Laws of England, 1817, 8vo
 HUTCHINSON. Treatise on Infanticide

* Vide a very sensible Essay on this subject in the American Jurist, vol. xiv. p. 253.

† An original and masterly production, evidently the work of an accomplished scholar.

- HUNTER Essay on the Uncertainty of the Signs of Murder in the case of bastard children
- JOHNSON Essay on the Signs of Murder in new-born children
- JOHNSTONE. Medical Jurisprudence of Madness *London*, 1800, 8vo
- LAW MAGAZINE The following 'Essays, 'Medical Jurisprudence' Vol i p 506
Vol. ii p 30 Vol iii p 158 Vol iv. p 25 Vol v 121, 344
- LYALL Medical Evidence relative to the duration of pregnancy *London*, 1827, 8vo
- MALE Epitome of Juridical or Forensic Medicine, 2d edition, 1819
- MACLEAN. Treatise on the Quarantine Laws, 8vo
- NEALE Elements of Forensic Medicine, 8vo
- ORFILA Toxicology, or Treatise on Poisons, 2 vols 8vo Translated by Waller
- PERCIVAL Medical Ethics, 12mo
- PARIS and FONBLANQUE Treatise on Medical Jurisprudence, 1823, 3 vols 8vo
- PEARKE Observations on Diseases of Literary Men, 8vo
- PRICHARD. A Treatise on Insanity and other Affections of the Mind. *Lon* 1835, 8vo
- ROBERTSON Treatise on Medical Police, 1808
- RYAN A Manual of Medical Jurisprudence *London*, 1833, 8vo
- SMITH Principles of Forensic Medicine, systematically arranged, and applied to British practice, 1823, 1827, 8vo
- SMITH Hints for the Examination of Medical Witnesses, 8vo
- SMITH Analysis of Medical Evidence, 1825, 8vo
- SIMPSON Observations on Homicidal Insanity [*Vide No v of the Edinburgh Law Journal*]
- SPURZHEIM Observations on Insanity *London* 1817, 8vo
- WILLIS Treatise on Mental Derangement *London*, 1823

II. AMERICAN.

- BECK, T R. Elements of Medical Jurisprudence * *New York*, 1823 Edited in England, by Dunlop, 1824-5, 5th edition *Albany*, 1835
- COOPER, Dr. Thomas Tracts on Medical Jurisprudence, consisting of the works of *Farr, Dease, Male, and Haslem*, with Notes, and a Digest of the Law relating to Insanity and Nuisance—and an Appendix *Philadelphia*, 1819, 8vo
- DUNGLISON Human Physiology, illustrated by Engravings, 2d edit 2 vols. *Philadelphia*, 1836.
- DUNGLISON. Syllabus of the Lectures on Medical Jurisprudence, and on the treatment of poisoning, and suspended animation *University of Virginia*, 1827, 8vo
- JURIST The following Essays in that valuable work Vol iii p 1 Vol vii p 460
Vol xiv p 1 Vol xiii p 333 Vol xiv p 253
- RUSH. Lecture on Medical Jurisprudence *Philadelphia*, 1811

III. CONTINENTAL.

- ADELON (and others.) *Annales d'hygiène, de médecine légale.* *Paris*, 1829, &c
- BARZELLOTTI Sull 'eccellenza della medicina légale *Siena*, 1817, 8vo
- BONAVENTURA. De naturâ partus octomensis adversus vulgarem opinionem lib. i decem, 1601.
- BRENDELIUS *Medicina legalis sive forensis.* *Paris*, 1801, 3 vols. 8vo
- BRIEN ET BRESSON Manuel complet de médecine légale *Paris*, 1828, 1830
- BELLOC Cours de médecine légale, théorique et pratique, 3d édition *Paris*, 1819

* A most approved work

- CAPURON** La Médecine légale relative à l'art des accouchemens *Paris*, 1821, 8vo
- CHAUSSIER** Recueil de mémoires, consultations et rapports sur divers objets de médecine légale. *Paris*, 1824.
- FAZELIUS** Elementa medicinæ forensis *Geneva*, 1767 [The basis of Dr Farr's work, q v.]
- FIDELIS** De relationibus medicorum *Palermo*, 1602
- FODERE**. Les lois éclairées par les sciences physiques, ou Traité de Médecine légale, et d'hygiène, 2d edition *Paris*, 1813, 6 vols 8vo
- GEORGET**. Discussion sur la folie médico-légale *Paris*, 1826, 8vo
- GEORGET**. Des maladies mentales dans leurs rapports avec la législation *Paris*, 1827.
- GROTONELLI** Recherche medico forensi, &c. *Firenze*, 1822, 8vo
- HENKE** Lehrbuch der Gerichtlichen Medicin *Berlin*, 1812, 8vo.
- HOFFBAUER**. Médecine légale relative aux aliénés, aux sourds-muets, trad de l'Allemand, par M Chambeyron *Paris*, 1827, 8vo
- LECIEUX**, (and others) Médecine légale, ou considérations sur l'infanticide, sur la manière de procéder à l'ouverture des cadavres, &c. *Paris*, 1819, 8vo.
- LUDWIG** Institutiones Medicinæ Forensis.
- LOUIS**. Lettres sur la certitude des signes de mort
- LE CLERC** Essai Medico-legal sur l'empoisonnement
- MAHON** Médecine légale et police médicale, avec notes de M. Fautrel. *Paris*, 1801, 3 vols. 8vo.
- METZGER** Principes de médecine légale et judiciaire, traduits de l'Allemand, et augmentés de notes, par Dr Ballard *Paris*, 1813, 8vo
- MECKEL** Lehrbuch der Gerichtlichen Medicin. *Hal* 1821, 8vo
- NEIMANN** Handbuch der Staatsarzneywissenschaft *Leipsic*, 1813, 2 vo's 8vo
- ORFILA** Traité des poisons, et de la médecine légale, 3d edit *Paris*, 1826, 2 vols 8vo
- ORFILA ET LESEUR** Traité des exhumations juridiques, et considérations sur les changemens physiques que les cadavres éprouvent en se pourrissant dans la terre, dans l'eau, &c. *Paris*, 1831, 2 vols. 8vo.
- PINEL**. Traité sur l'aliénation mentale *Paris*, 1801, 8vo Translated by Davis *Sheffield*, 1806.
- REGNAULT**. Du degré de compétence des médecins dans les questions judiciaires relatives aux aliénations mentales. *Paris*, 1830, 8vo
- SIKORA** Conspectus medicinæ legalis legibus Austriaco-provincialibus accommodatus. Notis auxit, J. D John *Prag* 1792, 4to.
- VOISIN**. Des Causes morales et physiques des Maladies Mentales *Paris*, 1826
- VALENTINUS** Corpus juris medico legale constans, à Pandectis Novellis et Authenticis iuricoforensibus *Frankfurt*, 1722, 2 vols. fol.
- WILBERG** Bibliotheca Medicinæ Publicæ.
- ZACCRIAS**. Questiones medico-legales, 1689 *Lugdun*, 1727, 3 vols. fol *

* Our desire has always been to restrict the present work within the narrowest limits consistent with the most enlarged exposition of the really practical sources in every department of our science. We have, therefore, limited the foregoing enumeration to a few out of the great multitude of works on this subject. We do not desire to give to this topic an undue portion of regard. We believe it has been much more written on, than read. A few sensible and practical works ought to be carefully studied, and the rest may serve a useful purpose for occasional research, when questions arise of great intricacy and importance. It is advisable to know the best sources, and with this view only, have we made the foregoing enumerations, leaving the particular selection to the sound judgment of the student and lawyer.

DIVISION VII.

The principles of Military law are as certain, determinate, and immutable, as the principles are of the common and statutory law, which regulates the civil classes of society — *Tytler's Military Law*

MILITARY AND NAVAL LAW

IN all nations whether civilized or barbarous War has been considered, more or less, as a regular profession, giving rise to a distinct order of persons dedicated to arms. The peculiarity of their condition, separated as they necessarily are, from the mass of the community, and especially from the moral influences of domestic life, gave rise to a distinct system of laws for their government, usually marked by great severity, and exacting the most complete subordination, and undeviating obedience. Our well known military and maritime states, as distinguished from the civil state, are subjected to codes of laws, and amenable to jurisdictions, peculiar to each, and though they, in common with the laws and tribunals of the civil state, emanate, in the main, from the same fountain, the former are regarded even in England, with some jealousy, owing in great part to confounding the present condition of those laws, with their crude, arbitrary, and capricious state, in the earlier periods of British history.

Martial law, whether military or naval, is at present a well defined and guarded system, and will be found on examination, to be as determinate, and as well known, as are the principles and decisions of the common and statute law. And though the penalties are often more severe, the violation of these laws is less probable to occur, owing to the strictness of the discipline, and the methodical vigilance which is constantly maintained.

In the remarks of Sir William Blackstone, when speaking of martial law, he seems to have departed from his usual caution. He regards it as 'built upon no settled principles'—'as entirely arbitrary in its decisions'—as 'in truth and reality

no law, but something indulged, rather than allowed as law;’ that the necessity of discipline can alone ‘give it countenance,’ and therefore, that ‘it ought not to be permitted in time of peace, when the king’s courts are open.’* All of these positions are, as we presume, wholly groundless, at least, as martial law has been known and practised long anterior to the publication of the Commentaries. It is true, indeed, that in arbitrary times the civil laws were occasionally suspended, the martial law was extended beyond its defined limits; and powers were exercised under its auspices, wholly at variance with law. It is equally true, that in much more recent times, and even now, shameful abuses of expressly defined powers under the military law, do occasionally take place. At one time, the mere possession of an heretical book was proclaimed to be a capital offence, and the offender pronounced a *rebel*, to be executed under *martial law*! But Queen Mary found no warrant for this in that law, or any other. In like manner Elizabeth proclaimed that all *insolent* offenders should be executed according to the justice of martial law! and yet neither the common law, nor the martial law, nor the queen’s prerogative, gave the least colour to these proceedings. Hence such assumptions of power by arbitrary princes, and the occasional abuses of conceded powers, even by legally constituted military organs, no more justify the uncompromising language of Mr. Justice Blackstone, than would the arbitrary proclamations, in mere civil cases, of the eighth Henry, of Mary and Elizabeth, and the modern abuses of such powers, sanction the condemnation of the system of British jurisprudence.

A brief account of the sources of military and naval law will sufficiently manifest the correctness of our assertion, that these codes are not obnoxious to the heavy censures passed on them; and that martial law is not, and need not be the capricious, cruel, and oppressive system, without principles, which it has been represented to be.

* 1 Comm chap 13

Martial law, whatever may have been the case in the time of lord Hale, is not at present liable to his remark, (which was followed by Dr. Blackstone,) that it is a system rather indulged by law, than constituting any part of it. and this we think will be evident, after tracing its existing statutory sources.

STATUTORY SOURCES OF MILITARY AND NAVAL LAW IN
ENGLAND

1. Petition of Rights, 3 Charles I. c. 1.
 2. Declaration of Rights.
 3. Statutes 13th and 14th, Charles II
 4. Mutiny Act, April 1689, *annually renewed, with such occasional alterations and amendments as Parliament devises, in times of peace or of war.*
 5. Articles of War, respecting the Army, made by the Sovereign, but strictly in conformity to the powers and restrictions contained in the mutiny act
 6. Printed Regulations, occasionally issued, and promulgated in general orders, on matters not embraced by the Articles of War, but in no case extending to *life or limb.*
 7. Parliament, in time of *rebellion*, may proclaim a martial law, in addition to that flowing from the mutiny act, and the articles of war in which case the offences are expressly defined, and also restricted to those which are in furtherance of the rebellion
 8. Thirty-six Articles of War respecting the Navy, enacted by Statutes 22 George II c. 33—and 19 George III. c. 17 Also by Statutes 37 George III. c. 70, 71, and 47 George III. c. 15, &c.
- ¶ The foregoing statutes and others, the articles respecting the Army and Navy, and the well guarded practice of courts martial, sufficiently establish the defined nature of this branch of English jurisprudence

As further evidence of the *certainty* of this law, and that the rights of the subject are *legally* protected, we shall briefly enumerate the principal grounds of this security from oppression

1. The *annual* renewal by parliament of the mutiny act, in which respect this differs from all other statutes, is an effectual preventive, not only against regal and other tyranny, but against parliamentary oppression, and the evils of improvident legislation: for, as the act endures but for one year, the army is dependent on its renewal; the faults ascertained by its practical operation, may be corrected; and the sovereign's power to frame articles of war may be restricted, modified or enlarged, according to the wants of the army, and in reference to the mode in which the sovereign may have executed the high trust reposed in him.

2. The power conferred on the king by the mutiny act, to frame the articles, restricts him expressly from extending punishment to *life* or *limb*, unless where the offence is expressly so punished by the mutiny act itself. Hence the sovereign's power extends only to such minor penalties as cannot very seriously affect the subject; and even if exercised oppressively, the very next parliament may correct the evil.

3. Whatever be the offence, and however trivial, no penalty can be inflicted, except through the ministry of a court martial.

4. This law operates exclusively on a defined class of people, whose vocation is arms; and only on military offences committed by officers, soldiers, and sailors,—and is generally the same in time of peace as in war: for even in case of rebellion, none would be liable to military law unless they belong to the army or navy, or unless parliament has previously ordained otherwise.

5. In all cases not embraced by the mutiny act, or by the articles of war, even soldiers, &c. are amenable to the civil tribunals only.

6. The sentence of a general court martial cannot be executed unless approved of by the king, or by the commander in

chief and in the case of a regimental court, by the commanding officer, or governor of the garrison.

7. An appeal lies from all such sentences to the court of King's Bench, or Common Pleas.

8. If the sentence be iniquitous, the party aggrieved may resort to a civil action for the recovery of damages against the members of the court martial.

9. If the court attempt to enforce a jurisdiction beyond their defined powers, a prohibition will lie from the superior courts.

10. Should the sovereign not entirely approve the proceedings of the court, he may order the case to be reviewed.

11. The sentence of a court martial may be pardoned, or remitted by the king.

12. The whole evidence must be taken down in writing, in the presence of the court; which is not only a great assistance to the tribunal itself, for the avoidance of error, but eminently advantageous to the accused.

13. If the defendant be acquitted, or if the prosecutor be non-suited, the defendant has awarded to him *treble* costs.

14. The number and rank of the officers who are to compose the court are carefully defined, and this is at all times known, or may be, to the accused.

15. No conviction can take place in capital cases, unless with the concurrence of at least two-thirds of the court.

16. The court cannot sit before eight o'clock in the morning, nor after three in the afternoon—so that the accused need not be hastened, nor the court be wearied by long sessions.

✎ It is very clear from the foregoing regulations, added to the certainty of the laws themselves, that this class of British subjects have no just cause to invoke the censures of Lord Hale and Mr. Justice Blackstone, to which we have previously alluded.

We have been induced to extend our remarks thus far on this subject, from the consideration of its general novelty, its great liability to be almost wholly neglected by students,—and

with the desire, also, of removing, *in limine*, those vague and erroneous prejudices, which have floated down the current of time, from rude and warlike ages, when this law was often cruel and arbitrary, and which have given to the very name of martial law a terror, and to the vocation of arms a reputation of severity and of hostility to liberty, which in no just sense, belong to them. We trust, and sincerely hope, that all nations will more and more see the wisdom of cultivating peace, and of mitigating the evils of war; however this may be, we are quite sure that a nation's best security is in arms, and policy, no less than truth, requires that all prejudices should be dispelled, and that every subject and citizen should know and acknowledge that the Military and Naval laws which regulate our arms on land and at sea, have nothing hostile to our liberties—nothing which a freeman need hesitate to own. We now proceed, in like manner, to state the sources of our own law respecting the Army and Navy, which will be found to be an equally well defined and just system, as that of England.

STATUTORY SOURCES OF MILITARY AND OF NAVAL LAW IN THE UNITED STATES

[The nature of our Union requires that not only the General Government should legislate in respect to the national army and navy, but that the state, also, should maintain an efficient and well organized militia. This has been attempted in all of the states, with more or less success. The laws if collected and carefully collated, would probably afford the *matériel* for compiling from the whole a very complete system of military law, adapted to the militia. Such a code is a great *desideratum*, not likely to be soon accomplished,—as during war the public mind is apt to be too much occupied for such deliberate undertakings,—and in time of peace, its necessity, and

indeed, the thought of war, nearly ceases with the sound of the drum. We regard the policy, principles, and feelings of our people, as essentially pacific. still, there are inherent in our institutions, in our lofty pride, high sense of national honour, in our love of liberty, and generous wishes for the whole family of man (not to advert to the elements among ourselves that might generate family feuds, and ultimately war) so many causes to bring us into collision with foreign nations, that a provident care urgently dictates the propriety of a perfect organization of our national and state forces,—the formation of humane, but efficient codes of military, naval, and militia laws, and finally, such a system of perfect preparation during peace, as may banish all apprehension in time of war. Under this conviction is it that we have given to the present Division of our Course, more consideration than possibly some of our readers may be disposed to think the subject requires. We entertain a wholly different opinion. Many years may possibly pass, and generations be consigned in quiet to the tomb—before we have another war; but the wisdom of all experience teaches that war is natural to man, and that the most effectual means of avoiding it, is to be at all times fully prepared for its occurrence.

§ The *cardinal* sources of our military and naval laws are wholly statutory, but even these are essentially the same in their provisions with those we have enumerated as existing in England. Still there may be said to be among us a military *common law*, derived from precedent and long usage. This common law is to be found in the military law of England, as far as the same is based on principles adapted to our situation, and when not repealed or modified by our own statutes or usages. Hence useful lights may be sought in the British treatises on military and naval law,—and even in those of other countries. In the following list the student is referred to No. 21, 22, 23, 24, 25, for the cardinal Sources of American law on these subjects, and to the other numbers generally, for the *collateral* or secondary sources of this law |

SOURCES OF BRITISH, AMERICAN, AND CONTINENTAL MILITARY AND NAVAL LAW

I. BRITISH

1. Bacon's Abridgment, chap 'SOLDIERS,' vol vi p 328
- 2 Jacob's Law Dictionary, vol ii — 'COURT MARTIAL,' p 152 — 'MARTIAL LAW,' p 154, vol iv — 'NAVY,' p 363 to 385
- 3 Rees' Cyclopædia — 'NAVY,' vol xxv — 'COURT MARTIAL,' vol x xiii.
- 4 Petersdorff's Abridgment — 'NAVY,' vol xii p 736. — 'MUTINY,' p 733. — 'MARTIAL LAW,' p. 588 — 'ARMY,' vol ii p 269
5. 'Military and Maritime States' 1 Black Com chap xiii
- 6 Reed's Pennsylvania Black Com 1 vol 200, 2 vol 485, 499
7. London Jurist, vol i. p 169 — 'MILITARY LAW.'
- 8 'Tytler's Essay on Military Law, and the Practice of Courts Martial *Edinburgh*, 1800, 2d edit 1806, with additions, 8vo
- 9 McArthur's Treatise on the Principles and Practice of Naval and Military Courts Martial, 2 vols. 4th edit *London*, 1813
- 10 Adye's Treatise on Courts Martial — Essay on Military Punishments and Rewards. *London*, 1805
- 11 Liddel's detail of the Duties of a Deputy Judge Advocate, with Precedents used in Naval courts, Sentences, Cases, and Opinions on special points, 1 vol fol *London*, 1806
- 12 Military Laws of England adapted to the general use of the Army, and the Practice of Courts Martial *London*, 1810.
- 13 Delafon on Naval Courts. *London*, 1805, 8vo
- 14 Scott's Military Law of England
- 15 Scott's Excellence of the British Military Code.
- 16 Hough's Practice of Courts Martial
17. Sullivan's Thoughts on Courts Martial
18. O'Beirne's Considerations on the Principles of Naval Discipline and Courts Martial. *London*, 1781, 8vo
- 19 Gilbert's Essay on the Power of Courts Martial to punish for contempt *London*, 1788, 8vo
20. Minutes of the Proceedings at a Court Martial for Inquiring into the conduct of William Cornwallis, Vice Admiral of the Red *London*, 1796, 1800, fol

II. AMERICAN.

- 21 Maltby's Treatise on Courts Martial, and Military Law, in the United States. *Boston*, 1813

- 22 *Military Laws, Rules and Regulations for the Armies of the U States. Washington, 1813. [This volume is divided into three parts First, the 101 Articles or Rules for the government of the Army, prescribed by the Act of Congress, April, 1810 SECOND, Laws of the United States, relating to the Military Establishments THIRD, Rules and Regulations for the Army, approved May, 1813]*
- 23 *Rules and Regulations for the government of the United States Navy [Act of Congress, April, 1800, or vide Maltby on Courts Martial, p 247]*
- 24 *Smith's Reports of Decisions in the Circuit Courts Martial in the State of Maine Portland, 1831.*
- 25 *Cross' Military Laws of the United States, compiled and published under the authority of the War Department Washington, 1825, 8vo [This is by far the most valuable work which has appeared on the Military laws and policy of the U States, exhibiting their history from the origin of our government to the date of its publication]*

III CONTINENTAL

- 26 *Traité de la Justice Militaire de France, par M. Joly Paris, 1598, 8vo.*
27. *Traité de la Procédure Criminelle devant les tribunaux Militaires et Maritimes, par M Legraverend Paris, 1808, 2 vols 8vo*
- 28 *Législation Militaire, ou Recueil méthodique et raisonné des lois, &c par M Berriat Paris, 1812, 5 vols Supplément Perpignan, 1817, 2 vols. 8vo*
- 29 *De l'Administration de la Justice Militaire en France, et en Angleterre, par V Foucher Paris, 1825, 8vo*
- 30 *Manuel des Conseils de Guerre, ou Recueil alphabétique de questions de droit militaire, par M Chénier. Paris, 1831, 8vo*
- 31 *Le Guide des Juges Militaire, ou Recueil des lois, &c. sur la législation militaire et maritime, par J B. Perrier Paris, 1831, 8vo*

We have given the foregoing, we fear imperfect, outline of the *sources and leading principles* of British and American military and naval law, with the hope that thus much being read, the student may be induced to prosecute the subject, at least to a moderate extent,—so that when called on, whether in war or in peace, he may be qualified to render professional aid in courts martial,—to serve, if required, as Judge-Advocate,—and finally, that he may not be wanting in that general knowledge of the subject which will enable him to refer with some confidence to the most approved sources, British, American and Continental, for such ample information as the calls upon him may require

On these subjects (as with Medical Jurisprudence,) we have preferred to deviate from our general plan, and have not given any particular course, but submitted to our student nearly all that has been written on the subject of military and naval law,—

leaving the selection and plan of study, in this respect, to his own judgment. A volume or two, carefully studied, may be sufficient for most persons, whilst those, who from their situation, or from some special call in cases of great interest, have to make extensive researches, will find in the enumeration we have made, means sufficiently ample for their purpose

DIVISION VIII.

'The logician, the orator, and the sophist, differ from each other, not in their powers, but, in their purposes. The sophist's purpose is falsehood, the logician's truth, the orator's persuasion.'—*Aristot. Rhet. b 1 ch 1*

LOGIC

FASHION would appear to exert no less power over literature than on manners, and to decide not less imperatively on systems of philosophy and modes of reasoning, than on forms of address and costume

The undeserved neglect of the learned is not more conspicuous than their unmerited renown. If sound philosophy has often been received with coldness, and consigned to temporary obscurity, idle systems have, on the other hand, been seen to usurp a long and despotic empire, to triumph alike over the understanding of the vulgar and the wise, and to yield place only to opinions yet more false and fantastical.

It is but a short period since the logic of Aristotle has been dismissed from the schools, over which it triumphed so long, and, perhaps, so mischievously, together with the numberless false systems to which it gave birth, to make room for sounder opinions, and more effectual modes of investigating truth. But in all great revolutions, either of politics or science, the displaced are ever exposed to extreme and unmerited disgrace. With the despotism of logic has expired also its fair and legitimate influence; its monstrous and absurd abuse by the school-men has stamped on it the character of *chicanery* and sophistry, and impressed an opinion of its absolute uselessness, or something worse. Nothing but its strange misapplication and abuse could have degraded so low, a science so

important,—which is defined indeed to be ‘the art of using reason well in our inquiries after truth, and in the communication of it to others,’ and which divested of the wordy jargon which so long obscured it, and improved and methodized by science, is at once intelligible to common sense, adapted to every subject of common life, indispensable in the consideration and illustration of every important concern, and essential in the vocation of the lawyer. We are indeed entirely convinced of the necessity of a rational system of logic to complete the education either of the jurist or the orator. While rhetoric imparts to oratory its warmth and its graces, logic gives it clearness and force, it is the property of the one to persuade, of the other to convince. Rhetoric and logic are forcibly illustrated by an ancient philosopher, who compared the latter to the hand closed, in reference to its collected and manly power, and the former to the open hand, in allusion to the softness, the graces, and nice proportions of the palm.

The subtleties and senseless refinements which so long disgraced this useful learning, and the disrepute into which, from this cause alone, it has fallen, will surely have no influence on the discriminating student, when he is informed, that there are extant systems of logic which are free from these excrescences, and which have reduced this subject into a perspicuous and intelligible method, replete with good sense and sound rules for the conduct of the mind in the exercise of all its functions.

To skill in this art is it that Cicero attributes the vast superiority of Servius Sulpitius, whom he pronounces the most scientific of all the Roman lawyers; for, says he, this pre-eminence could never have been attained by a devotion to law, an exclusion or neglect of an art which teaches the distribution of an entire subject into its proper parts, explains hidden properties by definition, dispels obscurities by apt interpretation, which enables one to perceive, and then to point out the distinctions in cases of ambiguity, and finally, which gives rules for discriminating with precision, false from

true propositions, and to understand upon given terms what is consequent and what otherwise.

Dr. Gregory, of Edinburgh, whose writings would reflect honour on any country, in any age, and whose varied learning, without a semblance of pedantry, is evidenced in his mode of treating even the most unimportant and ephemeral topics, in his celebrated memorial to the managers of the Royal Infirmary, has some observations on the utility of the art of logic, which from their excellence, we shall without apology transcribe.

‘The ultimate general principles of strict good logical reasoning, are, and must be the same at all times, and on all subjects whatever; for example, the same in the law at present, as in Greek mathematics two thousand years ago. Except in mathematical science, there is no subject of reasoning in which the real use and strict application of the principles of logic have been so well exemplified, and so much attended to, as in the law. The argument of an able lawyer, in point of strict reasoning, is scarce inferior to the demonstrations of Euclid and Archimedes; and if every cause had a right side, (which I believe is not the case,) and if an able and well employed lawyer always got the right side of every cause that he undertook, (which I presume impossible,) such a lawyer would not only be as strict but as candid, and, in every respect, as good a reasoner as a mathematician, who is always engaged in the discovery of truth, and who knows that he never can establish what is false; or obtain, as an able lawyer may often do, a wrong decision. There is no mystery or witchcraft in logic. When stripped of the uncouth and barbarous terms in which it has commonly been taught, or rather involved and concealed, it is perfectly intelligible, and satisfactory at once to every man of sense: for nothing is good reasoning or sound logic, because *logicians* have been pleased to call it so: but logicians have ascertained and established many fundamental principles of strict good reasoning, because on the most careful examination and repeated trials, they have

uniformly been found satisfactory and irresistible by all men of sense.'

It must be freely admitted, there was a time when logic, as then practised, was justly defined 'the art of disputing sophistically'—for the school-men (those false and pretended followers of Aristotle) not only perverted logic by their '*litigiosa subtilitas*,' but every other art and science. The truth is, nearly every branch of human knowledge, the elements of which were in any degree cultivated in those times, was disgraced, either by wild fancies, and absurd inventions, or by the use of occult and unintelligible words and phrases; all of which supplied the place of truth, and of sound philosophy.

But, happily, the theology of our day, is not scholastic theology,—our chemistry is not alchemy,—our astronomy consists not in the toilful observation and calculation of the supposed motions of concentric spheres. And so, lastly, our logic is not obnoxious to the charge of 'chopping truth down 'till no substance is left'—nor to lord Bacon's remark, *quæstionum minutius scientiarum frangunt soliditatem*.

Logic well applied, is *moral mathematics*,—but when perverted, tends to the opposite result of irresolution, and sometimes of *absolute scepticism*. Hence, Bayle thought that 'a man of wit, who applies himself long and closely to logic, seldom fails to become a mere caviller.' And it is said of Chillingworth, who had devoted his life to the practice of logic (erroneously applied) that he 'contracted such an irresolution and habit of doubting, that by degrees he grew confident in nothing, and a sceptic at least in the mysteries of faith.'

In our recommendation of logic, as a subject highly and peculiarly worthy the attention of lawyers, we are in no degree dismayed by the history of its abuses; nor by the wit and ridicule of its opponents. We know from all experience, that abuses will have their reformers, and that these reformers are often in no small degree, partisans. In these cases truth generally lies between the extremes; and it is our province to warn the student to free himself from all prejudices, and to resort

to all such sources as will enable him to separate and extract the good from the evil.

That the art of right reasoning may be cultivated, and is susceptible of being taught, both as an art and a science, ought not to be questioned; and that so able a reasoner as Gassendi, in his hostility to the then prevailing philosophy, should have permitted his zeal to render him insensible to the merits of sound logic, and to contend that the innate force of understanding needs no discipline whatever in the ascertainment of truth,* is only an example among thousands, that when we endeavour to reform abuse, we are too apt to undervalue the thing abused.

Many are disposed, not only to give a decided preference to mathematics as the best system of logic; but to doubt whether the reasoning faculty can be improved by any other means. We are inclined to entertain a very different opinion, since life is much more concerned with moral, than with mathematical reasoning. The lives of some of the most eminent mathematicians the world has known, seems to justify the opinion that the *certainty* of mathematical evidence is apt to render its votaries insensible to the less palpable conclusion of moral demonstrations. M. La Harpe states that D'Alambert, was very sceptical in every thing out of his peculiar study. and bishop Warburton says, that the oldest mathematician then in England, was the *worst reasoner* in it. Similar remarks have been made made of *Fatio*, and of *Proctus*, both eminent mathematicians; and *Barbeyrac* as well as *Le Clerc* and *Condillac*,† strongly inculcate the opinion that eminent mathematicians are often very bad reasoners. The truth, however, is that *mere moral reasoners* would be greatly improved by the study of mathematical reasoning; as is evidenced in the case of Bayle, who was ignorant of even Euclid's first book—and, on

* *Exercitationes Paradoxicæ adversus Aristotelem*, lib. II. Exer. 1

† Condillac remarks, 'Nous avons quatre metaphysiciens célèbres, Descartes, Malbranche, Leibnitz, et Locke, le dernier et le seul, qui ne fut pas *geometre*, et de combien n'est il pas supérieur aux trois autres'—Condillac vi. vol. p. 225, et vide 1 Kirwin's Logic, p. 5

the other hand, *mere mathematicians* often make but a sorry figure in moral reasoning. Logic has had its sophisms, and mathematics its paralogisms—but moral reasoning (which is that of the bar,) should seek its lights from them both, and, indeed, from every other source.

In conclusion, we pray the student to place but little reliance on the *modicum* of knowledge he may have collected from Watts or Duncan, during his collegiate studies. We entirely agree with lord Bacon, that 'logic is usually taught too early in life,' and that it is a subject which '*raw*' and '*unfurnished*' minds cannot well grasp. We earnestly recommend, therefore, that the most enlightened treatises on logic be frequently, and carefully examined by students and lawyers, during the entire course of their novitiate, and professional career for as the mind is more and more furnished with facts, it will be the better able correctly to appreciate and apply, the rules of a rational system of logic to the infinitely various calls upon the reasoning powers, which an extensive practice of law almost hourly demands.

We now proceed to the enumeration of such sources of information as may be resorted to with the certainty of finding all that is really useful in this admirable (though formerly much abused) department of knowledge

WORKS ON LOGIC.

- 1 WATTS ON LOGIC, or the right Use of Reason in the Inquiry after truth. London, 1725, 1782, 1 vol 8vo [This treatise is valuable as it has sufficient remains of the scholastic philosophy for students of our day, whilst the rest of the volume is strongly marked by the sound sense and clear thought and expression, of its pious and learned author.]
- 2 DUNCAN'S ELEMENTS OF LOGIC, 1790, 1 vol 8vo
- 3 KIRWIN'S LOGIC, or, An Essay on the Elements, Principles and Modes of Reasoning. London, 1807, 1809, 2 vols 8vo [A work of great excellence.]
- 4 The Abbé de Condillac's Logic, designed as a manual for the Polish Schools, 1790
- 5 Scott's Elements of Intellectual Philosophy, tending to ascertain the Principles of a Rational Logic. London, 1806, 8vo

- 6 Kett's *Logic made easy, or, a Short View of Aristotle's method of reasoning, and its application to literature, science, and the general improvement of the mind* London, 1809, 12mo
- 7 Jardine's *Outlines of Philosophical Education, illustrated by the Method of Teaching Logic in the University of Glasgow* Glasgow, 1818, 8vo
- 8 Collard's *Essentials of Logic* London, 1796, 8vo
- 9 Belsham's *Compendium of Logic* London, 1801
- 10 Whateley's *Logic*, a valuable work, by the author of *Elements of Rhetoric*
11. Hedge's *Elements of Logic* Boston, 1816

Logic

DIVISION IX.

'I do not here confine the name and character of HEROES to warriors and great conquerors, I extend the appellation to all persons who are in a high degree eminent, be they of the Cabinet, or of the Bar, and be they conversant in human or divine literature'—*Balthasar Gratian*.

'*L'on ne vaut dans ce monde que ce que l'on veut valoir*'—LA BRUYERE

PROFESSIONAL DEPARTMENT

EVERY one echoes the sentiment of lord Bacon, that 'knowledge is power;' if to this we add the beautiful and correspondent sentiment of a moralist of our own time, that 'virtue is power,' we have the two great principles which, combined, form the only true and solid basis of the 'art of rising in life.' This was, no doubt the idea of the great English philosopher, though the apophthegm, usually quoted from him, speaks of knowledge only, but in this case, the mention of the one was by no means designed as an exclusion of the other. The art of 'self-advancement,' from the days of Solomon to our own, has required the joint co-operation of virtue and of knowledge, and this must ever continue the case, and will become daily more manifest, as the world becomes daily more virtuous and enlightened.

Under the preceding divisions of our work, we have attempted to arrange for the student a choice, yet extensive course of professional reading. Amongst the numerous

volumes, &c we have recommended in the *regular Course*, (few indeed in comparison with the multifarious tomes of the law library, and few even in comparison with those adverted to in our Notes,) we make no doubt of having neglected some in both of these divisions of our work, with whose merit our reading may not have made us acquainted, while of others we have perhaps, spoken in the manner rather suggested by accidental prepossessions, than due to their intrinsic worth. Both of these it has been our anxious desire to avoid, but during the entire progress of our work, having aimed to bring our student gradually on from the smallest beginnings, to the most elevated attainments, we cannot hope to have uniformly preserved the right path. We trust, however, that we may reasonably assume the merit of delineating an outline, which, though it may be partially altered by different tastes, must certainly prove better than the vague, imperfect, and injudicious course which is generally pursued.

It was the wish of correcting this unprofitable plan of legal education, and of redeeming for the student many hours of vain and desultory labour, in a study sufficiently arduous with all the aid of method and selection, that engaged us in the present undertaking—an undertaking which must be performed very ill indeed, not to be productive of decided benefit. It is sufficiently apparent from the tenor of the observations scattered through the foregoing pages, as well as from the nature of the work itself, that while we desire to suggest every encouragement to students, we would offer no hopes to the indolent and the superficial. The most extensive legal acquirements, moreover, gained by the most methodical course of reading, will not make an accomplished and efficient lawyer. The knowledge of and strict adherence to professional deportment, are altogether essential to his honourable and permanent success. Regarding law as a science equally venerable from its objects, and noble from the ingenuity and mental expansion employed and excited in its acquisition and practice, we eagerly desire to see its shrine unprofaned by knavery and ignorance, and its

retainers not more eminent from the importance of their functions, than from the *honesty and skill with which they discharge them*. It is true we do not expect that this can ever happen, it is incident to the best things to be the most perverted; and while we may admire and emulate the portraiture which the votaries of law have been found to appropriate to its professors, we must be content to see its dignity often debased by the ignorant, and its liberality by the mercenary. At the same time there are many, we flatter ourselves, who, prompted by an honest passion for distinction, not less than by the hope of emolument, will enter on the study of our favourite science with the spirit and the views we have attempted to inspire, who conceiving of it far differently than as of a confused and arbitrary mass of *dictums* and decisions, regulated by no principles, and reducible to no order—as a means of subsistence degenerating into drudgery from the unscientific and mechanical manner in which it is often pursued, and for the most part more disreputable, indeed, than a mechanical pursuit—will desire to consider its philosophy and reason, and will receive with pleasure every attempt to facilitate their progress by the classification and selection of their reading. He, indeed, who has bestowed on law this kind of consideration—who has contemplated it originating in the first principles of nature and society; ever modified by circumstance, yet ever constant to those principles; ever changing its particular direction, yet never swerving from its general and inevitable objects, the good order and felicity of mankind, he too, who has exercised his genius in discerning the numerous modifications, combinations, and distinctions of its principles, the infinite number of cases seemingly alike, yet widely dissimilar, and all the subtle niceties which seem peculiarly incident to these studies, has not only been employed in the most noble and useful of human sciences, but has pursued the best discipline for invigorating his intellect, and enlarging his capacity for all other profound and useful learning. We do not wonder, therefore, at the partiality of those who remembering, in addition to the elevation of its objects, at once the learning and the skill, the

patient research, and the subtle genius, the drudgery and the enterprise, the laborious lucubrations and the ready adroitness, which seem requisite to form the accomplished lawyer, are disposed to exalt it above every other art and science

It is not our purpose, under the present title, to enter very largely on the *manner* and *conduct* which should distinguish the guardians of the laws of the land, and the champions of the rights of their fellow citizens. We have occasionally, in the course of this work, undertaken to point out what the law is, but our chief province has been to designate where the law may be found. Under the present Division, therefore, of our subject, we would not be understood as having engaged in the responsible task of defining with minuteness, the conduct of a lawyer in all his various professional relations, best adapted to advance his interests, and to maintain the dignity of his profession. This would, of itself, require a volume; but as the subject is, we may say, almost wholly new, and quite too important to be pretermitted, we shall indulge, in the course of the present title, in some hints, observations and rules, which we hope may prove useful, and be esteemed by none as a departure from the legitimate object of our work, or as savouring of arrogance or of vanity

We believe that, in most cases, *enlarged knowledge and noble studies* exercise so happy an influence on those who have addicted themselves to them, that treatises and precepts on mere *manner* and *conduct* become comparatively unnecessary to such minds, while to others they are either unintelligible or useless. The very acquisition of liberal knowledge supposes the acquisition of liberal ideas, so that, in most cases, the possession of intellectual power begets correctness in its application to the purposes of life, and the scientific mind is always supposed to derive, from the complexion of its pursuits, more correct, more enlarged, and more *honourable* views, than one of more circumscribed knowledge. Under the influence of these sentiments, we feel less solicitude for the works which we shall have it in our power to select on this topic; especially as the student will ever bear in mind,

that notwithstanding the word law is of comprehensive signification, lawyer is still more so; embracing the RICHNESS AND SOLIDITY OF LEARNING, THE PROFUNDITY OF WISDOM, THE PURITY OF MORALS, THE SOUNDNESS OF INTEGRITY, THE ORNAMENTS OF LITERATURE, THE AMIABLENESS OF URBANITY, THE GRACES OF MODESTY, AND, GENERALLY, THE DECORATIONS AND AMENITIES OF LIFE We have, therefore, under the present division of our Course, designated a few works calculated to augment the student's acquaintance with his own mind and heart, and furnish him with rules for the regulation of his conduct, either as it respects that decorum of manners which maintains 'with an even balance the dignity betwixt ourselves and others;' prudence in every vicissitude and relation of life, or the judicious use of the means best adapted to advance his private fortune, or particular vocation. On these topics, denominated by lord Bacon, *Conversation*, the *Doctrine of various occasions*, and the *Art of rising in life*, the pen of genius and of virtue have been industriously and efficiently employed, but on the peculiar duties and conduct of the lawyer, little that is very valuable, has been written.*

§4 On the subject of this title, we recommend to the student the following, as the best selection we have been able to make after a very careful examination, and we trust the propriety of the selection will be manifested by our Notes, read previous to the student's perusal of the works themselves

SYLLABUS.

- | | |
|--------------------------------|------------|
| 1. The Proverbs of Solomon. | } (Note 1) |
| 2. The Book of Ecclesiastes. | |
| 3. The Book of Ecclesiasticus. | |
| 4. The Book of Wisdom. | |

* For further remarks on this subject, vide post Note 18. 'Observations on Professional Deportment, with some rules for a Lawyer's conduct through life' Also, ante Note 13, p 345 Note 16, p. 358 Note 17, p 367, &c

5. Burgh's Dignity of Human Nature. [*Book i. part i the five sections Part ii sections 2, 3, 4, 5, 16 Book ii. sec. 8. Book iii. Introduction and sections, 7, 8, 9.*] (*Note 2*)
6. Watts on the Improvement of the Mind.
(*Note 3*)
- e. 7. Rochefoucault's Maxims or Sentences.
(*Note 4*)
- E. 8. Laconics; or the Best Words of the Best Authors. (*Note 5*)
9. Bacon De Augmentis Scientiarum. [*Sections xxiii. xxiv xxv Shaw's translation, or the London edition, 1825, page 306 to 353—or the admirable edition of Basil Montague, Esq. London, 1833.*] (*Note 6*)
- E. e. 10. The 'Hero' of Balthazar Gracian. (*Note 7*)
11. Fielding's Select Proverbs of all Nations.
London, 1824. (*Note 8*)
12. The Life of a Lawyer; written by himself. *London, 1830.* (*Note 9*)
- e. 13. Gisborne's Inquiry into the Duties of Men.
Chapter ix. 'On the Duties of the Legal Profession, page 331 to 416. (*Note 10*)
14. Edgeworth's Essays on Professional Education. *Chap vi. page 318 to 410 London, 1812.* (*Note 11*)
15. Quintilian's Institutes of the Orator.
Book xii. (*Note 12*)
- e. 16. The Barrister. *Edition of 1818.* (*Note 13*)
- e. 17. Letters on the Study and Practice of the Law. *Letter 35. 'Study of Philosophy' Letter 36 'Of Integrity' Letter 37 'Of*

Urbanity. Letter 38 *'Of Modesty.'* Letter

39. *'Philosophy useful, &c.'* (Note 14)

18. Of the Examination of Witnesses. *Vide*

Evans' translation of Pothier on Obligations.

Vol. ii. sec. ix. page 223.

19. Considerations on the viva voce Examination of Witnesses at the English Bar.

(Note 15)

e. 20. Miller on the Civil Law of England.

Section ii. 'Of Judges and Practitioners by whom justice is administered,' page 437 to

476. (Note 16)

21. Bacon's Essays. (Note 17)

[~~§~~ *Vide (Note 18,) near the close of this Title, for the author's views on the subject of PROFESSIONAL DEPORTMENT, and for a series of RESOLUTIONS, recommended to lawyers.*]

NOTES ON THE NINTH DIVISION

(Note 1.) PROVERBS OF SOLOMON, &c.—The wise and sententious proverbs of Solomon, seem to form a proper, and very natural commencement of a course of reading on that moral wisdom which teaches, not only the science, but the true art of being happy, and of promoting our earthly advancement. His learning and wisdom, never equalled, were, no doubt, in part, the result of an experience pre-eminent over that of all who had lived, or perhaps ever will live. A familiar acquaintance with these terse sentences, so pregnant with living truths, seems to be expected, no less in the mere man of the world, than in the moralist and christian. Professor Jahn remarks that the Hebrew word, rendered *proverbs*, and its equivalent in the Arabic, 'do not mean proverbs in the strict sense of the term, but sententious declarations, such as the book really

contains, relative to virtue and vice, to the conduct of domestic and public matters, to the education of offspring, to the government of a state, to the duties of children, parents, subjects, judges, magistrates and kings, to good and evil, and to happiness and misery. They are in some respects similar to the Golden Verses of Pythagoras, and to the Proverbs of Lockman and Meidan.*

For further remarks on the 'Proverbs,' we refer the student to our Note on the Bible at its close, and especially to Holden's beautiful Eulogium on the excellence and utility of these proverbs. We may here remark that Holden is the author of an Attempt towards an Improved Translation of the Proverbs of Solomon, with a Preliminary Dissertation. London, 1819. The Book of Proverbs contains thirty-one chapters.

THE BOOK OF ECCLESIASTES, which, for like reasons we have recommended, is also called the 'Book of the Preacher,' the word *Ecclesiastes* being thus rendered and applied to Solomon, one of whose three names was 'Preacher,' which word Holden thinks does not express the full import of the original, but that our language has not a more appropriate word.† This Book, and that of the Proverbs belong to what is called the *First Canon*, concerning the authenticity of which no doubts whatever are entertained, though it is questioned by competent judges who fully admit it to be canonical, whether Solomon be really the author of the Book of Ecclesiastes. Professor Jahn contends for the negative, and Mr. Holden maintains the affirmative. The controversy is of little importance to those who are really in search of the lessons of wisdom. Its twelve chapters are replete with salutary precepts to be as faithfully studied and practised by lawyers and judges, as by divines.

THE BOOK OF ECCLESIASTICUS, also called the 'Book of the Wisdom of Jesus the son of Sirach,' is apocryphal, or

* Vide Jahn's Intro 452

† The word 'Solomon,' that illustrious individual's principal name, signifies a *peace maker*. His second name, 'Idida,' is said to import *beloved of God*, and his third name, 'Ecclesiastes,' a *teacher of wisdom*.

belongs to what is called the *Second Canon*. It is in many respects very similar to the Book of Proverbs; is full of wisdom, apparently the result of much worldly experience, and is evidently the offspring of the purest morality and piety. It is supposed to have been written only about two hundred and eighty-five years before Christ. It contains fifty-one chapters.

THE BOOK OF THE WISDOM OF SOLOMON—This contains nineteen chapters, and must not be confounded with the other Book of Wisdom, just mentioned. This is also apocryphal. It is very generally admitted to be a production long after the age of Solomon, who is merely introduced, in a manner similar to Socrates, who appears to give the recitations in Plato's treatise *De Republicâ*.

We have been thus minute in our information respecting these four books of the sacred volume, from two considerations; first, because we are apprehensive that many young men are really under very mistaken impressions as to their value, considered merely as sources of useful worldly knowledge; and secondly, because the more familiar our acquaintance with them has become, the more we are satisfied that for beauty of expression, sublimity of morals, as the results of actual experience, and for an intimate knowledge of man's nature, they are pre-eminent, and that it would be a reproach to any scholar (in law hardly less than in divinity) to attain even the age of twenty-five, without a familiar knowledge, not only of their contents, but of all the learning which appertains to them.*

(*Note 2.*) **BURGH'S DIGNITY OF HUMAN NATURE**.—We have designated only such parts of this valuable work, as more especially appertain to the present title. The volume, however, is full of instruction and sound sense. The one hundred and twenty miscellaneous directions on the art of conversation, and the two hundred similar directions on propriety of con-

* For further remarks on the general subject of *aphorisms*, *adages*, *precepts*, *apothegms*, *maxims*, *laconisms*, vide Notes 4 and 5 on the present Title.

duct, contained in the sixteenth section, page 108, may be regarded as the distillation of nearly the entire work. The rules are laconic and well expressed, full of moral wisdom, and of worldly prudence, and if treasured in the heart and mind, cannot fail to regulate our deportment by a standard, pure, elevated, and practical, whilst they supply an ample and varied fund to embellish discourse, or to serve as themes for more extended reflections on the various duties of life. Dr. Burgh is the author of two other well known works, 'The Art of Speaking,' and 'Political Disquisitions.' He was born in 1714, and died in 1775. His work on the 'Dignity of Human Nature,' has always been a popular production. The third English edition was published in 1812, in one volume, 8vo.

(Note 3.) WATTS ON THE IMPROVEMENT OF THE MIND. Among the numerous excellent works of Dr. Watts, none has been read with more pleasure and improvement than the present. It was his singular merit to raise out of chaos, an orderly and beautiful system of logic, freed from the subtleties and learned jargon of the schoolmen, and in his treatise on the *Improvement of the Mind*, he has displayed the same dislike of pedantry and useless refinement. In this work the student will find the soundest rules for the easy acquisition of knowledge. These rules are deduced from an intimate and philosophical acquaintance with man, and form a methodical and admirable system, which, if strictly pursued, cannot fail to infuse a spirit of inquiry and observation, and to regulate and strengthen the faculties which they require. Dr. Johnson, in his life of Dr. Watts, speaks of this book with marked respect. 'Few books have been perused by me with greater pleasure than his *Improvement of the Mind*, of which the radical principles may indeed be found in Locke's *Conduct of the Understanding*, but they are so expanded and ramified by Watts, as to confer on him the merit of a work in the highest degree useful and pleasing. Whoever has the care of instructing others, may be charged with deficiency in his duty, if this

book is not recommended.' We may add that the work is valuable, not merely as a guide to the improvement of the mind, but of the heart also; and, as such will be found a useful monitor in regard to deportment in every relation of life. Dr. Watts was born at Southampton, in 1674, and died in 1748. He was the author of the well known treatise on Logic, and of many other works, which have been collected into six volumes, 4to.

(Note 4.) ROCHEFOUCAULT'S MAXIMS —The short and terse maxims of such works as this and others contained in our syllabus, or mentioned in our notes on the present title, often force their practical philosophy on the mind more powerfully than bulky treatises of ethics. It was a no less true than felicitous saying of Swift, that 'abstracts, abridgments, summaries, maxims, &c. have the same use with burning glasses, they collect the diffused rays of wit and learning in authors, and make them point with warmth and quickness upon the reader's imagination.' Seneca thinks that 'he who lays down maxims for the government of our lives, and the control of our passions, obliges human nature, not only in the present, but in all succeeding generations.' Voltaire, whose religion was always bad, but whose morals were often good, remarks in substance, that these sentences of Rochefoucault have contributed, more than any other similar performance, to form the taste of the French people; and further, that his memoirs of the Regency of Anne of Austria are *read*, but that his Maxims or Sentences are *committed to memory*. Lord Chesterfield, whose far famed letters to his son we cannot entirely approve, remarks that 'Rochefoucault's little book of maxims which I would advise you to look into for some moments at least every day of your life, is, I fear, too like and too exact a picture of human nature. I own, it seems to degrade it, but yet my experience does not convince me, that it degrades it unjustly.' To Rochefoucault it has been often objected, that his views of human nature are harsh, and his principles ungenerous. It is true, indeed, that the young mind does not easily admit his

unfavourable representations of mankind. yet he is a happy man, who reaches old age, and does not esteem this celebrated writer much more a painter than a caricaturist. He was born in 1613, and died 1680

(Note 5.) **LACONICS, &c.**—The student must have observed that we have in our language a number of words which import *generically* nearly the same meaning, but which specifically vary their signification, although the precise limits sometimes cannot be well defined such are the words *aphorism*, *apophthegm*, *proverb*, *rule*, *maxim*, *sentence*, *principle*, *motto*, *adage*, *device*, *precept*, *axiom*, *laconism*, &c. They have all, however, a common object,—the condensation of much thought in few and apt words. they convey some lesson, in pointed and impressive language, they are intended to be easily remembered, form much of the riches of popular wisdom,—and, like coins and medals, often serve as historical evidences of manners, customs, opinions, morals, &c. of individuals, classes, and even of nations. They are found in all ages, and among all people; but have been chiefly used, and so continue to be, among people whose information is but little conveyed through the medium of books and of writings. To this remark, however, there have been some signal exceptions, for fashion has sometimes revived and caused them to be much used and sought after by the *elite* of society. In the time of ‘good Queen Bess’ (if she ever were good) and in those of James and Charles, they were not only appealed to and greatly used in conversation, by men and women of high fashion, but the orators, and statesmen, and philosophers collected them with assiduity from all languages, and made earnest and free use of them, often bringing matters of import to a speedy conclusion by well applied proverbs and aphorisms. We have remarked that they belong to all countries, and to all ages. The seven sages of Greece had each applied to him the merit of first uttering some of these ‘*wise sayings*,’ and Plutarch thinks that ‘under the veil of these curious sentences are hid those germs of morals which the masters of philosophy

have afterwards developed into so many volumes.' So famous were the Lacedæmonians for this species of tersely expressed philosophy, that their short and pregnant expressions gave rise to one of the words belonging to the *genus* under consideration,—*laconics* and *laconism* being nearly synonymous with aphorisms, proverbs. To the entire genus, however it may be specifically divided, should still belong, as Howel has well expressed it, '*shortness, and salt,*' for when amplified, they necessarily lose much of their strength, and are no longer capable of that popular tradition, and of that daily application which render them so valuable. During the luxurious age of Louis the Fourteenth, so fashionable did proverbs become, that even comedies and ballets were so contrived as to illustrate and enforce them! The best known and most useful of the proverbs were literally *acted*, and by being made, as it were, *visible*, they could not fail to leave an enduring impression.

There are two great classes of proverbs, (using this as the generical word) viz. *local* and *universal*. The first take their rise from the laws, institutions, habits, virtues, vices, employments, and peculiarities of nations,—all of which they may, in a degree, illustrate; and may be aptly cited in confirmation or rejection of the testimony of history. They manifest the peculiar modes of thinking and of acting in communities, showing us the poetical character of one people, the phlegm of another; the nomadic habits of this nation, the retired and fixed habits of that; the wary policy of one, the open and unsuspecting character of another. The truth of this observation is strikingly manifest on reading Burkhardt's Arabic Proverbs, recently published, Kelly's Scottish Proverbs, Sailer's explanation of German Proverbs, the Spanish Proverbs by Oudin, and by Nuñez; and the Italian by Florio, and by Torriano. In these, and indeed in all other collections, the national peculiarities appear in high relief, and are as true to the life and to their originals respectively, as express treatises would be on their history, habits, institutions and morals.

The second class of proverbs, which we have denominated *Universal* are based on the common nature of man and of nations: they go to the heart and to the understanding of all; and though variously expressed according to the idioms of different languages, will be found to be essentially the same in all ages and in all nations. It is a delightful and useful employment, to assure ourselves of the identity of our species by studying these universal proverbs, they show not only that man in all times and in all nations entertained on numerous subjects very similar opinions; but that in similar situations, they resorted to similar modes of enforcing virtue, and of correcting the vices and follies of those around them: and that in so doing, they used expressions of the same import, with no other variation than what is referable to idiom, or to the idiocratic character of the particular people among whom they are found. Were the proverbs of all nations collected, and philosophically classed and explained, it would be a volume rich in thoughts, 'full of the genius, wit, and spirit of nations,' as Bacon well observed,—a volume replete with the elements of moral knowledge, reflecting light on the nature of our species, and a text book to which historians, metaphysicians, moralists, legislators, publicists, and even poets might resort, with the certainty of finding themes, which as Plutarch remarked, they could develop into so many volumes.

Should our student, in after life, be disposed to pursue the subject, beyond the narrow list contained in our syllabus, which might be read in a few days, we now furnish him with the means of so doing, by the following selection of the principal collectors and explainers of proverbs, &c. in various languages and nations, many of which have been translated into English. We would advise, however, that as far as may be practicable, they should be read, if read at all, in the originals, as it is manifest that this species of writing must lose considerably in the translation but where the language is unknown, readers will still find the translation to answer a very useful and pleasing end. It is proper to add that some

of the enumerated works are extremely rare; and are now given as much for the purpose of showing the sense of all nations, as to the value of this source of moral and intellectual instruction, as with any expectation that they will be of much practical use even to the learned and studious lawyer. Most of them, however, are easily attainable, and will be found rich in thought, and varied in entertainment.

LIST OF WORKS ON MAXIMS, APOPTHEGMS, &c IN VARIOUS NATIONS

1. **ORIENTAL.**—‘*Apotheigma Ebræorum ac Arabi ex variis auctoribus collecta*,’ 1591. ‘*Remarkable Sayings and Maxims of Eastern Nations*,’ viz Arabic, Persian, and Turkish, 1695 ‘*Sentences of Ali, son-in-law to Mahomet*,’ 1726 ‘*Anthologia Sententiarum Arabicarum*,’ 1776 ‘*Selecta quædam Arabum Adagia*,’ 1616 ‘*Proverbiorum Arabicorum Centuriæ*, II Arabicè et Latine, cum scholiis Josephi Scalegeri, et Thomæ Erpenii’ *Leyd* 1614, 4to. ‘*Burckhardt’s Arabic Proverbs, or, the Manners and Customs of the Modern Egyptians*’ *London*, 1830 ‘*Proverbia seu Sententiarum Morales Hebræicæ, et Latine, cum Commentariis Pauli Fagii*,’ 1542, 1660. ‘*Les Paroles Remarquables, les Bon Mots, et les Maximes des Orientaux*,’ par M. Galland, 1694
2. **GREEK.**—‘*Sententiarum vii Sapientium Græcæ, cum Scholiis*,’ 1528 ‘*The Sayings of the Seven Wise Men of Greece*,’ 1547. ‘*Many Curious Sayings ascribed to Plato*,’ 1753 ‘*Adagia Græcorum*,’ 1615 ‘*Apostolius’ Collection of Proverbs*—original work entitled ‘*Paræmiæ seu Proverbia*’ *Basle*, 1538, 8vo and by Paulinus, *Leyden*, 1653 ‘*The Meditations of the Emperor Marcus Aurelius Antonius*,’ translated from the Greek. 2 vols 12mo *Glasgow*, 1764. *Bath*, 1792, 1 vol 8vo. with learned and judicious notes, by R. Graves. This charming little work was early translated into French, under the title of ‘*Livre Dore*’ *Paris*, 1531, 4to. This work is too little known in our country
3. **ITALIAN.**—‘*A Collection of Italian Proverbs*,’ *London*, 1598. ‘*Proverbi Italiani, da Orlando Pescetti*’ *Ven.* 1618, 12mo ‘*Common-Place of Italian Proverbs, and Proverbial Phrases, digested into alphabetical order, illustrated with Notes*’ *London*, 1649, 1666, by Gio. Torrione ‘*Il Giardino di Recreatione*,’ ‘*Six Thousand Proverbs*,’ by Florio *London*, 1591. ‘*Scuola del Vulgo*,’ da Julio Varini, 1642
4. **SPANISH.**—‘*Refranes o Proverbios Castellanos*,’ par Cæsar Odin, 1624 ‘*Proverbes Espagnols traduits en François*,’ par C. Oudin. *Paris*, 1605. ‘*A Collection of*

- Italian and Spanish Proverbs, by Arnoult, under the assumed name of Antoine Dumont' *Besancon*, 1761 'Refranes, o Proverbios en Romance' *Salamanca*, 1555 *Madrid*, 1619
- 5 GERMAN—Bebele's Collection of German Proverbs in the 'Opuscula Bebeliana' *Strasburg*, 1512, 4to 'Blum's Dictionary of German Proverbs' *Leipste*, 1792. 'Agricola's Explanation of Four Hundred German Proverbs,' 1530 'Sailer's Wisdom of the Streets, or, the Meaning and Use of German Proverbs.' *Augsburg*, 1810, (in German)
- 6 SWEDISH—'Maxims and Reflections, translated from the Swedish Language' *London*, 1791.
- 7 DUTCH.—'Agron's Handwoordenboek,'—French and Dutch. *Amsterdam*, 1821 'English and Dutch Dictionary of Words and of Select Proverbs,' 1700
8. DANISH—'Danish Proverbs, with a French Translation' *Copenhagen*, 1761.
9. FRENCH—'Hecatographie, c'est à dire les Descriptions de cent Figures et Histoires, contenant plusieurs apophthegmes, proverbes, sentences et dictez, tant des anciens que des modernes, par M Carrozet' *Paris*, 1538, 8vo 'Curiosités Françaises,' par Ant. Oudin *Paris*, 1640, 8vo 'Explication de Proverbes François,' par Henry de Bellingen.
- 10 SCOTTISH—'Collection of Scottish Proverbs,' by David Ferguson, 1598, 1785. 'A Collection of English and Scottish Proverbs,' by John Ray, 1670, 1721 'A Complete Collection of Scottish Proverbs,' by James Kelly *London*, 1721, 8vo.—1818, 12mo
11. ENGLISH—'John Heywood's Dialogue, conteyninge, the number in effect of, all the Proverbs in the English Tunge,' 1561, 1598, 4to. 'Bank's Proverbs or Adagies' *London*, 1539, 8vo 'Trusler's Proverbs Exemplified,' 1811, 1813 'Ray's English Proverbs' *London*, 1670,—1813, 8vo 'Helps for Short Memories, consisting of Maxims, Rules, Proverbial Sayings,' &c *London*, 1903 'Moral Maxims, by a Lady' *London*, 1812 'Moral Reflections upon Select English Proverbs,' by Oswald Dykes *London*, 1708 'Crossing of Proverbs,' &c. 1616 'Outlandish Proverbs, Sentences,' &c by Geo Herbert *London*, 1651 'Old English Sayings Newly Expounded,' by J Taylor *London*, 1627 'The Book of Aphorisms, by a Modern Pythagorean' *Glasgow*, 1834 *
- 12 AMERICAN—'Franklin's Moral Works'—*passim* 'The Prompter, A Commentary on Common Sayings,' &c *New York*, 1803. 'Moral Encyclopedia,' by Varlé. *New York*, 1831 'The Fragments of the Choice Sayings of Publius Syrus,' vide a work entitled 'The Phoenix,' *New York*, 1835.

* The author is Dr Robert Macnish, to whom we are indebted for the 'Philosophy of Sleep,' and the 'Anatomy of Drunkenness'

- 13 MISCELLANEOUS.—‘Two Thousand Maxims, Principles,’ &c. 1758 ‘Proverbiorum . . .,’ of Polydore Virgil. *Venice*, 1500, 4to —[The first of its kind in . . . times] ‘Adagia,’ by the same. ‘Proverbes or Adagies, with new additions, gathered out of the Chiliads of Erasmus, by R. Taverner *London*, 1547, 8vo [a large part being a translation from Publius Syrus, who lived in the time of Augustus] ‘Garden of Wysdome, conteynnge the Sayeyngs of Princes, Philosophers,’ &c. *London*, 1539. ‘Fuller’s Adigies, Proverbes, Wise Sentiments, &c. of ancient and Modern times’ *London*, 1732 ‘Mavor’s Proverbs, or, the Wisdom of all Nations.’ *London*, 1804. ‘Proverbs carefully taken from the Adagia of Erasmus, illustrated by examples from the Spanish, Italian and French languages, 1814, 2 vols, 8vo. ‘Mapletoft’s Proverbs of all Nations,’ 1707

[35] We again remind the student that the foregoing list is not designed for him, the few works of the kind which we have recommended to him in the Syllabus will be sufficient. But should he in after life have leisure to indulge a fondness for the moral sciences, this more ample list may then serve him a useful purpose.]

(Note 6.) LORD BACON’S ADVANCEMENT OF LEARNING.—In his treatise *De Dignitate et Augmentis Scientiarum*, this great philosopher proposes that, what he calls *self-policy*, or the *art of rising in life*, should be treated scientifically; and, according to his manner, he illustrates his general views by some rules of practical wisdom that might serve as hints to be enlarged into a methodical treatise by any future moral Machiavellian. Speaking of this ‘architecture of fortune,’ he says, ‘we do not report it as a part of knowledge that is absolutely deficient; not but that it is *practised* too much, but it hath not been *reduced to writing*. And therefore, lest it should seem to any not to be comprehensible by axioms, it is requisite that we should set down some heads or passages of it.’ He further remarks, ‘it may appear, at the first, a new and unwonted argument to teach men how to raise and make their fortune; a doctrine wherein every man perchance will be ready to yield himself a disciple, till he seeth difficulty.’* The golden opinions of Lord Bacon on any subject have been found too

* Adv. of Learn. 323 Vide also Note 17, on this Division

valuable not to arrest the attention of all subsequent writers. As to the topic under consideration, it is remarkable that there is not a precept, nor an intimation contained in the brief outline of the noble author, which has not been used by the numerous writers who have treated the subject,—none, indeed, with an adoption of the name, or with an express recognition that they have desired to execute the *desideratum* mentioned by Lord Bacon; but, in some cases with an evident eye on the task imposed by this illustrious pioneer, and philosophical prophet.

(Note 7.) THE HERO OF BALTHAZAR GRACIAN—This work seems to have enjoyed, in its day, a very extended reputation. Its editor, Don Lastanosa, speaks of it as having undergone many impressions, been translated into many languages; applauded by the learned and polite of all nations; largely transferred into the works of numerous authors; and, to its greatest glory, placed by Philip IV. of Spain, among his choicest and most valuable books, in the royal museum! There is certainly much wisdom, close thought, accurate observation of man, sound morals, high honour, and practical sense in this volume, and its notes, as presented to the English reader by an Oxford scholar in 1725. It being among the earliest productions of Balthazar Gracian, it fortunately escaped, in a great degree, the extremely vitiated style of his other, once very popular, works, and which strongly marked the prose, as well as poetic productions of Spain, towards the close of the seventeenth century. Gracian, a jesuit in religion and politics, was a man of genius and distinguished learning. For reasons, not entirely known, he published 'El Hero,' in 1637, and subsequently, many other works, under the name of Laurence Gracian. His other works are replete with the *incetti*, and, what has been called, the *Gongorism* of the age,—especially 'El Criticon,' an allegorical picture of human life from the cradle to the grave, in the form of a romance; which, though graced with many uncommon thoughts, and bold displays of genius, is full of every strange affectation and

fanciful conceit. His most popular work, and one similar in object with that of the Hero, is the 'Oraculo Manual,' a book of maxims, in which, however, the learned jesuit has been less cautious in manifesting the peculiar tenets of his dangerous school. The Hero and the Oraculo should not be passed over by the scholar in search of moral wisdom, and the art of advancing in life, both of which are so necessary to distinguished eminence in the legal profession. Legal knowledge, of itself, is not sufficient: and though the native virtues of the heart, and the lights of a good understanding may do much, both are strengthened and regulated by the lessons and experience of others, who, to a life of thought and of observation, have availed themselves of much that is valuable in these respects in the morals of Homer, Aristotle, Seneca, Cicero, Plutarch, Tacitus, Esop, Zoroaster, Confucius, Publius, Syrus, and numerous others.

(Note 8.) FIELDING'S SELECT PROVERBS OF ALL NATIONS. In this work, among the most modern on the subject, we have an opportunity of comparing many of the most approved proverbs of all nations,—which will be found to illustrate the views we have taken in the preceding Note 5, and to strengthen the claim of these laconics to be regarded as the distillations of practical wisdom. We repeat that judiciously selected proverbs are apt to contain the moral, political, and domestic philosophy of the thinking portion of our species; they originate in close thought and accurate observation, and are transmitted and applied only by minds capable of the like thought and observation.

(Note 9.) THE LIFE OF A LAWYER; WRITTEN BY HIMSELF. Those who have read with pleasure and advantage the delightful fiction, in a recent work, entitled 'Diary of a Physician,' will be pleased and edified with the 'Life of a Lawyer,' which no doubt, was conceived by the author, in consequence of the great popularity of the 'Diary.' To the young lawyer this work, though also a fiction, may prove serviceable, as it paints

to the life, the eventful occurrences encountered by a young man of talents and worth, who having to contend, in a large capital, with numerous difficulties in his professional career, finally triumphs over them all, and attains the highest and most enduring honours. 'The hero is Baron Malverne, Lord High Chancellor of England, who once a subordinate in a country attorney's office; by the force of a due share of talent, by great industry, pure morals, and the most uncompromising honour; surmounts poverty, reaps an ample share of the emoluments of his profession, and eventually becomes judge, member of parliament, and lastly, as we have stated, Lord Chancellor. It is a pleasing tale, the moral of which is to show to the young aspirant in the law, that professional eminence, and even the highest distinctions of state are open to all who prove themselves meritorious of them, and that virtue and honour, and industry are the only effectual means of surmounting the difficulties of life, and of reaping the benefits of wealth and of distinction. If this be the case, as it certainly is in a great degree in England, it is still more so in our country, where every man's success is almost strictly in the ratio of his industry, talents and moral worth.

(*Note 10.*) GIBBORNE'S INQUIRY —There is much useful and highly interesting information in this chapter, on many of the important duties of the lawyer and judge. The author commences with a vindication of the legal profession from numerous dishonourable imputations; and shews them to be founded in prejudice and error. Like Quintilian, he inquires into the kind of causes in which a lawyer may justifiably engage, and treats of the knowledge, habits, dispositions, and morals generally, which should claim his particular regard. His duties prior to, and at the trial of causes, are pointed out, and reasons given why he should not early engage in public employments, particularly as a legislator. The peculiar temptations and duties of the parliamentary and crown lawyer are next treated of, and many sensible observations are made on

the highly responsible office of a judge. The whole is comprised in a chapter.

(Note 11.) EDGEWORTH'S ESSAYS, &c.—In the chapter in this work, 'Of the Profession of the Law,' there are many excellent thoughts on the discipline and education of law students. We are happy to find the sentiments which we have expressed on these points, in different parts of this Course, corroborated by so judicious a writer as Mr. Edgeworth. He insists on the lawyer's induction to general literature; on the necessity of method, the usefulness of logic; and the propriety of a knowledge of common characters and affairs. In his remarks, also, on the examination of witnesses, and on the uselessness of the usual long apprenticeships in law offices, in his observations on legal memory, and his admiration of Mr. Bentham, we entirely agree with him. This, and the chapter in Gisborne's Inquiry, mentioned in the preceding note, would occupy the student but a few hours, and should by no means be neglected, as they will amply compensate him.

(Note 12.) THE TWELFTH BOOK OF QUINCTILIAN'S INSTITUTES OF THE ORATOR.—In our second Division of Auxiliary Subjects, 'Forensic Eloquence and Oratory,' this justly celebrated work was recommended to the student, and we presume has been attentively read, with no less interest than improvement. We desire, however, at this time to attract his particular attention to this twelfth book. Quintilian, after educating his Orator in all the *learning* of his art, proceeds in this concluding book to enforce the necessity of *good morals*, and prescribes various rules essential to his certain and enduring success. He ingeniously maintains, that there can be no efficient eloquence, unless the speaker be an *honest* man; points out the species of knowledge best adapted to improve the heart, and consequently to advance the orator's skill in the art of speaking; designates the particular dispositions of the mind which should be especially cultivated, speaks of the period in which his orator should commence his career; exa-

mines the difficult questions which arise as to the causes which an orator is justified in advocating, and his conduct in their management, dwells on the matters most worthy of regard in *studying* his causes, and particularly those things which he should well observe in *pleading* them; and then concludes with some remarks on the various kinds of eloquence, and the adaptation of each species to the particular cause. It is scarce necessary to state that what is thus addressed to the ancient orator, in respect to morals, conduct, and policy, is equally applicable to lawyers of the present day.

(*Note 13.*) **THE BARRISTER.**—This is a charming and instructive little volume, manifestly the production of a man of law and of literature, and the offspring of an accomplished and reflecting mind. It is impossible to read this work without catching a portion of that honourable spirit which guides the pen of its author. The philosopher, the orator, and the gentleman should be intimately blended with the lawyer, to constitute that character which it is the desire of the Barrister, and the humble attempt of this Course, to form.

This work was originally published in the 'World,' and is from the pen of Thomas Ruggles, Esq. who republished it in 1792, with considerable additions, and an introduction, in two volumes, 12mo. A second edition, with corrections, appeared in 1818.

(*Note 14.*) **LETTERS ON THE STUDY AND PRACTICE, &c.**—We have not recommended the whole of this volume, though it has been much, and favourably, spoken of. This we believe has been owing, in part, to the opinion entertained by many, that it is from the pen of Sir James Mackintosh. It is sometimes written with eloquence and spirit, but abounds, we think, in verbiage throughout. We are reluctant to believe, that a book so generally wordy, tedious, and declamatory, is the production of that accomplished statesman and scholar. The chapters recommended come properly under the head of professional deportment, and merit an attentive perusal.

(Note 15.) CONSIDERATIONS ON THE VIVA VOCE EXAMINATIONS, &c.—This sensible essay, on a highly useful topic, is appended to a work called *Deinology*, by Hortensius. Scarce any part of a lawyer's professional duty requires more skill and delicacy of management, than the *viva voce* examination of witnesses. Great knowledge of the human character, the art of adapting his manner to its varieties, penetration, equanimity, amiableness, clearness of expression, &c. are requisite in extracting the precise truth from witnesses; and it is one of those arts on which a lawyer's success or discomfiture frequently depends, independently of the intrinsic merits of his cause. It is an art, in which there may be a considerable display of genius; and often more strongly commands the admiration of intelligent observers, than elaborate and eloquent speaking. The ninth section of the second volume of Evan's *Pothier* is recommended by us in this place, chiefly on account of some useful observations on this topic, addressed to young practitioners; and also on account of some valuable remarks on the subject of scientific evidence. We also here refer the student to Note 18, of the present Division, and particularly to the thirty-fifth, and forty-second Resolutions, for additional observations on matters connected with the present topic.

(Note 16.) MILLER'S INQUIRY INTO THE CIVIL LAW OF ENGLAND.—That part of the work which relates to the 'Judges and practitioners by whom justice is administered,' applies to our present subject; but may be recommended rather to statesmen, judges, legislators, and experienced lawyers, than to students or those about to commence their professional career. We have ventured, however, to hope that our work may not be wholly passed over, even by the former.

Mr. Miller's volume is one of that numerous class of valuable publications addressed to the people of England, with the view of pointing out the abuses of the law, and its defects, with suggestions for their amendment. Some of the evils

complained of arise from the mistaken and unprofessional department, whether of judges, lawyers, officers, &c. The author inquires into the actual state of the Civil Law of England; treats of the constitution of the courts of law and of equity; their defects in organization and in practice; of various errors in the systems of personal and real law, which defects it is his object to remedy; of the means by which his improvements may be most effectually promoted, and, among other things he treats in the section now recommended, of the qualities which should characterize efficient and competent judges; and of the great importance of integrity, elevated honour, and adequate learning in them, as well as in barristers, solicitors, and all other ministers of the laws. The work at large comes more properly under the Fifth Division of Auxiliary Subjects of our Course, as it treats of what is called Codefication. It may not be out of place at this time to state only for those, however, who have taken up our 'Course' at the present point, that many of the nations of Europe, and some of our own states, have been much agitated on the subject of the imperfections and abuses of their systems of jurisprudence, both civil and criminal. In England, as well as on the continent there may be said to be three sects or schools.* Some contend that the entire scheme of law is so totally defective or vicious, as well in theory as in practice, that the whole system needs to be remodeled, and reduced to a code, simple, methodical, and wholly freed from the errors of past times. Others admit the existence of partial defects and abuses, and the necessity of amendatory laws—whilst a few, tenacious of all that has been so long consecrated, are unwilling to sanction any changes; any, at least, which are suggested by what is called the Reform Party.*

(*Note 17.*) LORD BACON'S ESSAYS.—These essays are too well known to require a very special notice of them. They were written by their gifted author at various times, and seems

* For further information on this subject we refer the student to the Fifth Division of the Auxiliary Subjects of this Course, ante p 672

to have been highly prized by him. In an address to his brother Mr. Anthony Bacon, in 1597, he alludes to their being in the hands of many persons *in manuscriptis*, and to the propriety of publishing them to prevent 'untrue copies;' and justly remarks, that, after examination he finds nothing of them 'contrary or infectious to the state of religion or manners, but rather medicinal.' Subsequently, in his Dedication to the Duke of Buckingham, he remarks, that 'they, of all my other works, have become most current; for that, as it seems, they come home to men's business and bosoms.' The topics, fifty-nine in number, are selected with great judgment, and form a little code of morals, of prudence, and of self-policy, which may be regarded as a valuable chapter of a work on the 'architecture of fortune,' which, in his treatise *De Augmentis Scientiarum*, he considers as a desideratum, and which, since his time, has never been fully and ably completed in any one treatise devoted to the subject. Remote approaches to it are, perhaps, to be found in 'Burgh's Dignity of Human Nature,' the 'Hero,' of Balthazar Gracian, 'Watts on the Mind,' and 'Rochefoucault's Maxims.'*

(Note 18.) OBSERVATIONS ON PROFESSIONAL DEPORTMENT, WITH SOME RULES FOR A LAWYER'S CONDUCT THROUGH LIFE.

We have frequently adverted to the salutary influence which the cultivation of the moral sciences exercises over the mind and heart. The seeds of vice are seldom generated, and are never fully matured in the morning of a life engaged in such studies. Honest resolutions, the offspring of innocence, and exemption from temptation, are generally nourished by those fresh from their books, and who have had but little intercourse with the outer world. It is, however, an undeniable truth, that culpable ambition, false pride, the love of lucre, and even

* Vide Notes 2, 3, 4, and 7, of the present Division.

dishonesty, sometimes make silent, insidious, and almost imperceptible, inroads on the morals, and the virtuous resolutions of young practitioners, especially of those who have neglected to strengthen and establish their native virtues, by a careful study of the reasons and grounds on which they rest, and by which alone they can be preserved. Whilst, therefore, our *science* (which embraces morals) expands the understanding and furnishes the heart with the purest principles of action, it will often be found that the *practice* of our profession is peculiarly calculated to suppress their influence. The solution of this alarming fact lies in the very nature of man, and perhaps in the very nature also of the legal vocation. Its office is, indeed, to adjust the disputes and to preserve the harmony of individuals, and of society, to vindicate the laws of God and of man, and to lessen, or remove all the evils which arise from ignorance and vice. But such an office brings its ministers into a too intimate and dangerous acquaintance with man's depravity; it places them in the midst of temptations; and whilst engaged in rescuing others, they sometimes fall the only lamented victims. The disputes and controversies with which even eminent lawyers are often engaged, are frequently founded on bad, if not the worst of passions. On the one side, or the other, dishonesty sometimes actuates the client; and the indomitable pride of opinion, exacerbated by opposition, may mislead the counsel, and render him blind to the real merits of the controversy. The success of the client is always that of the counsel: the interests and feelings of the latter become in a measure identified with those of the former, and be they meritorious or the reverse, the tie is often of such a nature as to generate the seeds of moral evil. Perhaps in a majority of legal disputes some dereliction of sound morals lies on one side or the other; not that cases do not arise in

which the question is honestly and justly disputed by both of the litigant parties. But believing, as we do, that in most cases one of the disputants is *knowingly* in the wrong, the lawyer's vocation must of necessity expose him to some portion of those feelings, and agitating passions which either generate these causes, or protract them to a long and vexatious period. In point of *interest*, also, as well as of feeling, the lawyer is occasionally too intimately connected with his client not to feel the force of those passions which lessen the ardour of virtue. He is made familiar with the artful devices of cunning, the ingenious contrivances of fraud and oppression; the well guarded schemes of the shrewd, artfully made by them to amble on the very confines of dishonesty, yet speciously to avoid an overt breach of morals; and finally, he is compelled to learn the most dangerous of all lessons, viz: the vast power, conferred by intellectual superiority, over the rights and possessions of the ignorant, or the necessitous. And though the lawyer's obligation to be faithful in the discharge of the numerous trusts reposed in him, be of the most solemn and honourable kind, yet the temptations to some indirection are so insidious, so various, and so powerful, that he needs the constant presence of the best guarded, and most confirmed moral principles, to counteract their almost insensible operation.

All this may be regarded by many as an overcharged, and too dark a portrait of the evil enticements which environ and beset the paths of the practising lawyer. But the student must not apply the eulogiums on the moral influences of the science, to those influences which arise in the actual occupations of a busy professional life: and whilst we would repel, with indignation, the opprobrium cast by vulgar prejudice, and traditional error, on the members of our profession; we are sensible that the youthful ministers at the altars of justice

have great need, not only for the wisdom of man, but for that which is from above, if they would preserve through life that purity, and perfect exemption from moral contamination, with which they commence their interesting career

Whilst, therefore, we desire to guard the young practitioner against the dangers to which we have just alluded, we are fully sensible how great is the preservative principle of a highly cultivated mind, and of a legal education based on a careful study of the moral sciences. But added to all this, the very conviction that his vocation is one of peculiarly high trust, and of honourable obligation is, of itself, a strong preventive, and a powerful antidote against temptation; and if religion and morals be not of themselves quite sufficient, the scale will sometimes be turned to the side of virtue, by those principles emphatically denominated *honourable*. We cannot perceive that it is in any degree the dictate of prejudice, when we say, that no other science is so well calculated as the Law, to excite and foster in the mind, the principles of an elevated honour. If the lawyer be subjected to temptations to do wrong, he is also powerfully excited to act fairly and honourably, and to do right. His situation, of all others, is the furthest removed from a negative one. In his intercourse with his professional brethren, and, indeed, with the world generally, he seems peculiarly bound to the observance of the most honourable and refined moral deportment. any known departure from this excites more than ordinary distrust; because, among other reasons, much is expected from his intelligence; and all are, in a degree, interested in his trustworthiness, since his vocation confers on him the capacity of being any one's trustee; or the power of promoting, or of retarding any one's interests. Character, therefore, and the

best of manners are to the lawyer invaluable; the former essential, the latter worthy of all cultivation.

In no career is the great importance of courteous, correct, and honourable deportment more strikingly manifest. If the lawyer would *gain* clients, he must be popular with the world around him; if he would *preserve* them he must also be respected by the bench and the bar. Eminent success at the latter depends not solely on learning, eloquence, and sound morals; manners are also of the highest necessity. One who is beloved by his professional brethren, and by the judicial and ministerial officers of the court, soon finds a numerous list of clients, equally adhesive in their attachment, and anxious to promote his welfare and elevation. And if the practitioner should be cautious in his deportment towards clients and the members of the bar, he should be still more so in his intercourse with the court. If loyal to their clients, it is not always easy for counsel, even of the most courteous manners, to prevent collisions with the bench. The unavoidable dependence of the former, on the power of the latter, is apt to generate, in some minds, servility; in others a morbid impatience of control. These extremes should be equally avoided; for, whilst nothing is more ruinous to professional success than ill favour with the court (for clients perceiving it, are apt to magnify its effects) yet a too tame submission to the occasional arrogance, and oppression of judicial sway, is no less so. On this subject we desire not to be misunderstood. Judges are but men, and as such, are sometimes liable to the influences of passion and of prejudice. The most honest and honourable judicial minds can be cast from their pivot by circumstances. The animation of debate, so strong with counsel, is not equally felt by the court. The former is apt to

misconceive the latter, and in his zeal becomes, perhaps, unintentionally offensive, the latter, in turn, feels the pride, both of opinion and of office,—an altercation ensues, which generally terminates in the discomfiture of the counsel. If, on the other hand, the court be manifestly in the wrong, and the *amende* be made, the counsel may be the victor, but it is possible he may have purchased success at too great a cost. Such collisions, therefore, ought to be avoided, if possible; but if not, a manly and respectful maintenance of the counsel's rights, becomes essential; and it should be done in such a manner that, whilst it leaves no sting, he may convince the court that as its officer, and his client's patron, he has rights which *must* be protected. It is said of lord Erskine, that whilst always deferential, he was still remarkable for the fearlessness with which he opposed the bench, when in his judgment, the occasion really demanded it. In an instance which occurred with lord Kenyon, *after firmly declining to submit to the court*, the learned counsel, in a decorous manner, explained to his lordship the rule of his conduct at the bar. 'It was the first command and counsel of my youth,' said he, 'always to do what my conscience told me to be my duty, and to leave the consequences to God. I shall carry with me the memory, and I trust, the practice of this paternal lesson to the grave. I have hitherto followed it, and have had no reason to complain, that my obedience to it has been even a temporary sacrifice. I have found it, on the contrary, the road to prosperity and wealth, and I shall point it out as such to my children.' This course, being called for by the occasion, became irresistible: but the practitioner, who is not always an Erskine, (nor the judge a Kenyon) should feel the inward and quiet consciousness that he is in the right, and that the matter is of sufficient moment to take such a stand,—other-

wise it may degenerate into captiousness, or assume the appearance of mock heroism. But pass we now to other matters.

Our young lawyer may rest assured that he has every motive for the utmost assiduity in the acquisition of knowledge, and for the most inflexible honour in the practice of his profession. He has proffered him respect and influence in society, professional reputation, high stations of honour and of profit, and all the goods of intellectual and worldly wealth, in a growing and enlightened republic. If true to himself, most, if not all of these, are within his reach, but his practical motto must be 'Id facere laus est quod decet, non quod licet' The character of a lawyer who does justice to his profession, may not easily be drawn. but we hold him to be one, whom early education has imbued with the lessons of probity, and habituated to labour and research in all that enlarges and refines the mind, and chastens the heart. He desires to impart lustre to the utility of his learning, by fostering every honourable and amiable affection. He has tasted of the fountains of liberal science, and of polite letters, before entering on his more technical studies, and has thus protected himself from pedantry and narrow views. To this he has subsequently added the sciences most necessary to the purposes of his profession, and obtains over society a large and legitimate control, which he exercises only that he may become in it a more useful member. He is the assertor of right, the accuser of wrong, the protector of innocence, and the terror of crime. He labours not for those alone who can afford the *honorarium*, but for the widow, the fatherless and the oppressed. No prospect of gain will induce him to advise the pursuit of law against right or sober judgment, nor will any man's greatness be a shield against the justice due to his client. If he assist

in the enactment of laws, which he may be afterwards called on to vindicate, it is done with an eye solely to his country's good, and whilst he respects its legislature and judiciary, he learns to reverence the constitution more than either. History presents to him the riches of her experience, and he notes, with care, the rudiments, and growth, and revolutions of his science. Rhetoric and logic are weapons by which he imparts to his oratory warmth and grace, force and clearness. From his knowledge of man, he ascertains the real nature of truth; and he loves and cultivates rectitude, for the more useful exercise of his powers. Destitute of these, he is either unprofitable, or mischievous to society,—but endued with them, he is one of its chiefest ornaments, and firmest safeguards.

Admitting, however, our student, (now about to commence the practice) to be a young man of the soundest morals, and of the most urbane, and honourable deportment; it may still be well that he should be fortified with a few rules for his future government. We have been to him (we hope as we intended) a faithful guide through a long course of preparation, and cannot even now feel as if we had fully discharged our duty, unless we leave him a memento of our regard for his welfare, long after he has bid adieu to these volumes, and when he has become fully engaged in all the perils, and honours, and emoluments of an arduous profession. We therefore submit to him the following *Resolutions*, to be adopted by him as guides, never to be departed from, and to which he will ever be faithful. We have preferred to frame them in the manner of resolutions, rather than of *didactic rules*, hoping they may thereby prove more impressive, and be the more likely to be remembered.

RESOLUTIONS

IN REGARD TO

PROFESSIONAL DEPORTMENT.

i. I WILL never permit professional zeal to carry me beyond the limits of sobriety and decorum, but bear in mind, with Sir Edward Coke, that 'if a river swell beyond its banks, it loseth its own channel.'

ii. I will espouse no man's cause out of envy, hatred or malice, towards his antagonist.

iii. To all judges, when in court, I will ever be respectful: they are the Law's vicegerents; and whatever may be their character and deportment, the individual should be lost in the majesty of the office.

iv. Should judges, while on the bench, forget that, as an officer of their court, I have rights, and treat me even with disrespect, I shall value myself too highly to deal with them in like manner. A firm and temperate remonstrance is all that I will ever allow myself.

v. In all intercourse with my professional brethren, I will be always courteous. No man's passions shall intimidate me from asserting fully my own, or my client's rights; and no man's ignorance or folly shall induce me to take any advantage of him; I shall deal with them all as honourable men, ministering at our common altar. But an act of unequivocal meanness or dishonesty, though it shall wholly sever any personal

relation that may subsist between us, shall produce no change in my deportment when brought in *professional* connection with them; my client's rights, and not my own feelings, are then alone to be consulted.

VI. To the various officers of the court I will be studiously respectful, and specially regardful of their rights and privileges.

VII. As a general rule, I will not allow myself to be engaged in a cause to the exclusion of, or even in participation with the counsel previously engaged, unless at his own special instance, in union with his client's wishes: and it must, indeed, be a strong case of gross neglect or of fatal inability in the counsel, that shall induce me to take the cause to myself.

VIII. If I have ever had any connection with a cause, I will never permit myself (when that connection is from any reason severed) to be engaged on the side of my former antagonist. Nor shall any change in the *formal aspect* of the cause, induce me to regard it as a ground of exception. It is a poor apology for being found on the opposite side, that the present is but the *ghost* of the former cause.

IX. Any promise or pledge made by me to the adverse counsel, shall be strictly adhered to by me: nor shall the subsequent instructions of my client induce me to depart from it, unless I am well satisfied it was made in error; or that the rights of my client would be materially impaired by its performance.

x. Should my client be disposed to insist on captious requisitions, or frivolous and vexatious defences, they shall be neither enforced nor countenanced by me. And if still adhered to by him from a hope of pressing the other party into an unjust compromise, or with any other motive, he shall have the option to select other counsel.

xi. If, after duly examining a case, I am persuaded that my client's claim or defence (as the case may be,) cannot, or rather ought not, to be sustained, I will promptly advise him to abandon it. To press it further in such a case, with the hope of gleaning some advantage by an extorted compromise, would be lending myself to a dishonourable use of legal means, in order to gain a *portion* of that, the *whole* of which I have reason to believe would be denied to him both by law and justice.

xii. I will never plead the Statute of Limitations, when based on the *mere efflux of time*; for if my client is conscious he owes the debt; and has no other defence than the *legal bar*, he shall never make me a partner in his knavery.

xiii. I will never plead, or otherwise avail of the bar of *Infancy*, against an honest demand. If my client possesses the ability to pay, and has no other legal or moral defence than that it was contracted by him when under the age of twenty-one years, he must seek for other counsel to sustain him in such a defence. And although in this, as well as in that of limitation,

the *law* has given the defence, and contemplates in the one case, to induce claimants to a timely prosecution of their rights, and in the other, designs to protect a class of persons, who by reason of tender age are peculiarly liable to be imposed on,—yet, in both cases *I shall claim to be the sole judge* (the pleas not being compulsory) of the occasions proper for their use.

xiv. My client's conscience, and my own, are distinct entities: and though my vocation may sometimes justify my maintaining as facts, or principles, in doubtful cases, what may be neither one nor the other, I shall ever claim the privilege of solely judging to what extent to go. In *civil* cases, if I am satisfied from the evidence that the *fact* is against my client, he must excuse me if I do not see as he does, and do not press it: and should the *principle* also be wholly at variance with sound law, it would be dishonourable folly in me to endeavour to incorporate it into the jurisprudence of the country, when, if successful, it would be a gangrene that might bring death to my cause of the succeeding day.

xv. When employed to defend those charged with crimes of the deepest dye, and the evidence against them, whether legal, or moral, be such as to leave no just doubt of their guilt, I shall not hold myself privileged, much less obliged, to use my endeavours to arrest, or to impede the course of justice, by special resorts to ingenuity—to the artifices of eloquence—to appeals to the morbid and fleeting sympathies of weak

juries, or of temporizing courts—to my own personal weight of character—nor finally, to any of the overweening influences I may possess, from popular manners, eminent talents, exalted learning, &c. Persons of atrocious character, who have violated the laws of God and man, are entitled to no such special exertions from any member of our pure and honourable profession; and indeed, to no intervention beyond securing to them a fair and dispassionate investigation of the *facts* of their cause, and the due application of the law: all that goes beyond this, either in manner or substance, is unprofessional, and proceeds, either from a mistaken view of the relation of client and counsel, or from some unworthy and selfish motive, which sets a higher value on professional display and success, than on truth and justice, and the substantial interests of the community. Such an inordinate ambition, I shall ever regard as a most dangerous perversion of talents, and a shameful abuse of an exalted station. The parricide, the gratuitous murderer, or other perpetrator of like revolting crimes, has surely no such claim on the commanding talents of a profession, whose object and pride should be the suppression of all vice, by the vindication and enforcement of the laws. Those, therefore, who wrest their proud knowledge from its legitimate purposes, to pollute the streams of justice, and to screen such foul offenders from merited penalties, should be regarded by all, (and certainly shall be by me,) as ministers at a holy altar, full of high pretension, and apparent sanc-

tity, but inwardly base, unworthy, and hypocritical—dangerous in the precise ratio of their commanding talents, and exalted learning.

xvi. Whatever personal influence I may be so fortunate as to possess, shall be used by me only as the most valuable of my possessions, and not be cheapened, or rendered questionable by a too frequent appeal to its influence. There is nothing more fatal to *weight of character* than its common use; and especially that unworthy one, often indulged in by eminent counsel, of solemn assurances to eke out a sickly and doubtful cause. If the case be a good one, it needs no such appliance; and if bad, the artifice ought to be too shallow to mislead any one. Whether one or the other, such *personal pledges* should be *very sparingly* used, and only on occasions which obviously demand them; for if more liberally resorted to, they beget doubts where none may have existed, or strengthen those which before were only feebly felt.

xvii. Should I attain that eminent standing at the bar, which gives *authority* to my opinions, I shall endeavour, in my intercourse with my junior brethren, to avoid the least display of it to their prejudice. I will strive never to forget the days of my youth, when I too was feeble in the law, and without standing. I will remember my then ambitious aspirations, (though timid and modest,) nearly blighted by the inconsiderate, or rude and arrogant deportment of some of my seniors; and I will further remember that the vital spark of my

And I will further remember that the vital spark of my

early ambition might have been wholly extinguished, and my hopes been forever ruined had not my own resolutions, and a few generous acts of some others of my seniors, raised me from my depression. To my juniors, therefore, I shall ever be kind and encouraging; and never too proud to recognize distinctly that, on many occasions it is quite probable their knowledge may be more accurate than my own, and that they with their limited reading and experience have seen the matter more soundly than I with my much reading and long experience.

xviii. To my clients I will be faithful; and in their causes, zealous and industrious. Those who can afford to compensate me, *must do so*; but I shall never close my ear or heart, because my client's means are low. Those who have none, and who have just causes, are, of all others, the best entitled to sue, or be defended; and they shall receive a due portion of my services, cheerfully given.

xix. Should my client be disposed to compromise, or to settle his claim, or defence; and especially if he be content with a verdict, or judgment, that has been rendered; or, having no opinion of his own, relies with confidence on mine, I will in all such cases greatly respect his wishes and real interests. The further prosecution, therefore, of the claim, or defence, (as the case may be) will be recommended by me only when, after mature deliberation, I am satisfied that the chances are decidedly in his favour; and I will never forget that

the pride of professional opinion on my part, or the spirit of submission, or of controversy (as the case may be) on that of my client, may easily mislead the judgment of both, and cannot justify me in sanctioning, and certainly not in recommending, the further prosecution of what *ought* to be regarded as a hopeless cause. *To keep up the ball* (as the phrase goes,) at my client's expense, and to my own profit, must be dishonourable; and however willing my client may be to pursue a phantom, and to rely implicitly on my opinion, I will terminate the controversy as conscientiously for him, as I would were the cause my own.

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xx. Should I not understand my client's cause, after due means to comprehend it, I will retain it no longer, but honestly confess it, and advise him to consult others, whose knowledge of the particular case, may probably be better than my own.

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xxi. The wealthy, and the powerful shall have no privilege against my client, that does not equally appertain to others. None shall be so great as to rise, even for a moment, above the just requisitions of the law.

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xxii. When my client's *reputation* is involved in the controversy, it shall be, if possible, judicially passed on. Such cases do not admit of compromise; and no man's elevated standing shall induce me to consent to such a mode of settling the matter: the *amende* from the great and wealthy, to the ignoble and poor, should be free, full, and open.

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xxiii. In all small cases in which I may be engaged, I will as conscientiously discharge my duty, as in those of magnitude; always recollecting that 'small' and 'large' are to clients, relative terms, the former being to a poor man, what the latter is to a rich one,—and, as a young practitioner, not forgetting that large ones, which we have not, will never come, if small ones, which we have, are neglected.

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xxiv. I will never be tempted, by any pecuniary advantage, however great, nor be persuaded by any appeal to my feelings, however strong, to purchase, in whole, or in part, my client's cause. Should his wants be pressing, it will be an act of humanity to relieve them myself, if I am able; and if not, then to induce others to do so. But in no case will I permit either my benevolence, or avarice,—his wants or his ignorance, to seduce me into any participation of his *pending* claim or defence. Cases may arise in which it would be mutually advantageous thus to bargain; but the experiment is too dangerous, and my rule too sacred to admit of any exception, persuaded as I am that the relation of client and counsel, to be preserved in absolute purity, must admit of no such privilege, however guarded it may be by circumstances. And should the special case, alluded to, arise, better would it be that my client should suffer, and I lose a great and honest advantage, than that any discretion should exist in a matter so extremely liable to abuse, and so dangerous in precedent.

And though I have thus strongly worded my resolution, I do not thereby mean to repudiate, as wholly inadmissible, the taking of *contingent fees*,—on the contrary, they are sometimes perfectly proper, and are called for by public policy, no less than by humanity. The distinction is very clear. A claim or defence may be perfectly good in law, and in justice, and yet the expenses of litigation would be much beyond the means of the claimant or defendant—and equally so as to counsel, who if not thus contingently compensated, in the ratio of the risk, might not be compensated at all. A contingent fee looks to professional compensation only on the final result of the matter in favour of the client. None other is offered, or is attainable. The claim or defence never can be made without such an arrangement; it is voluntarily tendered, and necessarily accepted or rejected *before* the institution of any proceedings.

It flows not from the influence of counsel over client, both parties have the option to be off; no expenses have been incurred; no moneys have been paid by the counsel to the client; the relation of borrower and lender, of vendor and vendee, does not subsist between them,—but it is an independent contract for the services of counsel, to be rendered for the contingent avails of the matter to be litigated. Were this denied to the poor man, he could neither prosecute, nor be defended. All of this differs essentially from the object of my resolution, which is against *purchasing*, in whole

or in part, my client's rights, after the relation of client and counsellor, in respect to it, has been fully established—after the strength of his case has become known to me—after his total pecuniary inability is equally known—after expenses have been incurred which he is unable to meet—after he stands to me in the relation of debtor,—and after he desires *money from me* in exchange for his pending rights. With this explanation, I renew my resolution, never *so to purchase* my client's cause, in whole, or in part,—but still reserve to myself, on proper occasions, and with proper guards, the professional privilege, (denied by no law among us,) of agreeing to receive a contingent compensation, *freely offered*, for services *wholly to be rendered*, and when it is *the only* means by which the matter can either be prosecuted, or defended. Under all other circumstances I shall regard contingent fees as obnoxious to the present resolution.

xxv. I will retain no client's funds beyond the period in which I can with safety and ease, put him in possession of them.

xxvi. I will on no occasion blend with my own, my client's money: if kept *distinctly as his*, it will be less liable to be considered *as my own*.

xxvii. I will charge for my services what my judgment and conscience inform me is my due, and nothing more. If that be withheld, it will be no fit matter for *arbitration*; for no one but myself can adequately judge of such services, and after they are successfully rendered, they are apt to be ungratefully forgotten. I

will then receive what the client offers, or the laws of the country may award,—but in either case, he must never hope to be again my client.

xxviii. As a general rule, I will carefully avoid what is called the '*taking of half fees.*' And though no one can be so competent as myself to judge what may be a just compensation for my services,—yet, when, the *quiddam honorarium* has been established by usage or law, I shall regard as eminently dishonourable all *underbidding* of my professional brethren. On such a subject, however, no inflexible rule can be given to myself, except to be invariably guided by a lively recollection that I belong to an honourable profession.

xxix. Having received a retainer for contemplated services, which circumstances have prevented me from rendering, I shall hold myself bound to refund the same, as having been paid to me on a consideration which has failed; and, as such, subject to repetition, on every principle of law, and of good morals,—and this shall be repaid not merely at the instance of my client, but *ex mero motu*.

xxx. After a cause is finally disposed of, and all relation of client and counsel seems to be for ever closed, I will not forget that it once existed; and will not be inattentive to his just request that all of his papers may be carefully arranged by me, and handed over to him. The execution of such demands, though sometimes troublesome, and inopportune, or too urgently made, still remains a part of my professional

duty, for which I shall consider myself already compensated.

xxx^yi. All opinions for clients, verbal, or written, shall be *my opinions*, deliberately and sincerely given, and never *venal and flattering offerings to their wishes, or their vanity*. And though clients sometimes have the folly to be better pleased with having their views confirmed by an erroneous opinion, than their wishes or hopes thwarted by a sound one, yet such assentation is dishonest and unprofessional. Counsel, in giving opinions, whether they perceive this weakness in their clients or not, should act as *judges*, responsible to God and to man, as also especially to their employers, to advise them soberly, discreetly, and honestly, to the best of their ability—though the certain consequence be the loss of large prospective gains.

xxx^yii. If my client consents to endeavours for a compromise of his claim, or defence, and for that purpose I am to commune with the opposing counsel, or others, I will never permit myself to enter upon a system of tactics, to ascertain who shall overreach the other, by the most nicely balanced artifices of disingenuousness, by mystery, silence, obscurity, suspicion, vigilance to the letter, and all of the other machinery used by this class of tacticians, to the vulgar surprise of clients, and the admiration of a few ill judging lawyers. On the contrary,—my resolution in such a case is, to examine with great care, previously to the interview, the matter of compromise; to form a judg-

ment as to what I will offer, or accept; and promptly, frankly, and firmly to communicate my views to the adverse counsel. In so doing, no lights shall be withheld that may terminate the matter as speedily, and as nearly in accordance with the rights of my client as possible; although a more dilatory, exacting, and wary policy, might finally extract something more than my own, or even my client's hopes. Reputation gained for this species of skill is sure to be followed by more than an equivalent loss of character: shrewdness is too often allied to unfairness,—caution to severity,—silence to disingenuousness—wariness to exaction, to make me covet a reputation based on such qualities.

xxxiii. What is wrong, is not the less so from being common. And though few *dare to be singular*, even in a right cause, I am resolved to make my own, and not the conscience of others, my sole guide. What is morally wrong, cannot be professionally right, however it may be sanctioned by time or custom. It is better to be right with a few, or even none, than wrong, though with a multitude. If, therefore, there be among my brethren, any traditional moral errors of practice, they shall be studiously avoided by me, though in so doing, I unhappily come in collision with what is (erroneously I think) too often denominated the policy of the profession. Such cases, fortunately, occur but seldom,—but when they do, I shall trust to that moral firmness of purpose which shrinks from no consequences, and which can be intimidated by no authority however ancient or respectable.

XXXIV. [√]Law is a deep science: its boundaries, like space, seem to recede, as we advance: and though there be as much of certainty in it, as in any other science, it is fit we should be modest in our opinions, and ever willing to be further instructed. Its acquisition is more than the labour of a life; and, after all, can be with none the subject of unshaken confidence. In the language, then, of a late beautiful writer, I am resolved to 'consider my own acquired knowledge but as a torch flung into an abyss, making the darkness visible, and showing me the extent of my own ignorance.'*

XXXV. I will never be voluntarily called as a witness, in any cause in which I am counsel. Should my testimony, however, be so material that without it my client's cause may be greatly prejudiced, he must at once use his option to cancel the tie between us in the cause, and dispense with my further services, or with my evidence. Such a dilemma would be anxiously avoided by every delicate mind,—the union of counsel and witness being usually resorted to only as a forlorn hope, in the agonies of a cause,—and becomes particularly offensive, when its object be to prove an *admission* made to such counsel by the opposite litigant. Nor will I ever recognize any distinction in this respect between my knowledge of facts acquired before, and since the institution of the suit; for, in no case will I consent to sustain by my testimony any of the matters which my interest and professional duty render me

anxious to support. This resolution, however, has no application whatever, to facts contemporaneous with, and relating merely to the prosecution or defence of the cause itself; such as, evidence relating to the contents of a paper unfortunately lost by myself or by others—and such like matters, which do not respect the original merits of the controversy, and which, in truth, adds nothing to the once existing testimony; but relates merely to matters respecting the conduct of the suit, or to the recovery of lost evidence: nor does it apply to the case of gratuitous counsel,—that is, to those who have expressly given their services voluntarily.

xxxvi. Every letter or note that is addressed to me, shall receive a suitable response, and in proper time. Nor shall it matter from whom it comes, what it seeks, or what may be the terms in which it is penned. Silence can be justified in no case: and though the information sought cannot, or ought not to be given, still decorum would require from me a courteous recognition of the request, though accompanied with a firm withholding of what has been asked. There can be no surer indication of vulgar education than neglect of letters and notes; it manifests a total want of that tact and amenity, which intercourse with good society never fails to confer. But that *dogged silence* (worse than a rude reply) in which some of our profession indulge, on receiving letters offensive to their dignity, or when dictated by ignorant importunity, I am

resolved never to imitate,—but will answer every letter and note with as much civility as may be due; and in as good time as may be practicable.

xxxvii. Should a professional brother by his industry, learning, and zeal, or even by some happy chance, become eminently successful in causes which give him large pecuniary emoluments, I will neither envy him the fruits of his toils or good fortune,—nor endeavour, by any indirection, to lessen them; but rather strive to emulate his worth, than enviously to brood over his meritorious success, and my own more tardy career.

xxxviii. Should it be my happy lot to rank with, or take precedence of my seniors, who formerly endeavoured to impede my onward course, I am firmly resolved to give them no cause to suppose that I remember the one, or am conscious of the other. When age and infirmities have overtaken them, my kindness will teach them the loveliness of forgiveness. Those again, who aided me when young in the profession, shall find my gratitude increase in proportion as I become the better able to sustain myself.

xxxix. A forensic contest is often no very sure test of the comparative strength of the combattants,—nor should defeat be regarded as a just cause of boast in the victor, or of mortification in the vanquished. When the controversy has been judicially settled against me, in all courts, I will not ‘fight the battle o’er again,’ *coram non judice*; nor endeavour to persuade others (as is too often done) that the courts

were prejudiced,—or the jury desperately ignorant,—or the witnesses perjured,—or that the victorious counsel were unprofessional and disingenuous. In such cases, *Credat Judæus Apella!*

XL. Ardour in debate is often the soul of eloquence, and the greatest charm of oratory. When spontaneous and suited to the occasion, it becomes powerful. A sure test of this is when it so alarms a cold, calculating, and disingenuous opponent, as to induce him to resort to numerous vexatious means of neutralizing its force,—when ridicule and sarcasm take place of argument,—when the poor device is resorted to of endeavouring to cast the speaker from his well guarded pivot, by repeated interruptions, or by impressing on the court and jury that his just and well tempered zeal is but passion, and his earnestness but the exacerbation of constitutional infirmity,—when the opponent assumes a patronizing air, and imparts lessons of wisdom and of instruction! Such opponents I am resolved to disappoint, and on no account will I ever imitate their example. The warm current of my feelings shall be permitted to flow on; the influences of my nature shall receive no check; the ardour and fullness of my words shall not be abated,—for this would be to gratify the unjust wishes of my adversary, and would lessen my usefulness to my client's cause.

XLI. In reading to the court or to the jury authorities, records, documents, or other papers, I shall always consider myself as executing a *trust*, and, as

such, bound to execute it faithfully and honourably. I am resolved, therefore, carefully to abstain from all false, or deceptive readings; and from all uncandid omissions of any qualifications of the doctrines maintained by me, which may be contained in the text, or in the notes. And I shall ever hold that the obligation extends, not only to words, syllables and letters, but also to the *modus legendi*: all intentional false emphasis, and even intonations, in any degree calculated to mislead, are petty impositions on the confidence reposed; and, whilst avoided by myself, shall ever be regarded by me in others, as feeble devices of an impoverished mind; or as pregnant evidences of a disregard for truth, which justly subjects them to be closely watched in more important matters.

XLII. In the examination of witnesses, I shall not forget that perhaps circumstances, and not choice, have placed them somewhat in my power. Whether so, or not, I shall never esteem it my privilege to disregard their feelings; or to extort from their evidence what, in moments free from embarrassment, they would not testify. Nor will I conclude that they have no regard for truth, and even the sanctity of an oath, because they use the privilege, accorded to others, of changing their language, and of explaining their previous declarations. Such captious dealing with the *words* and *syllables* of a witness, ought to produce in the mind of an intelligent jury, only a reverse effect, from that designed by those who practise such poor devices.

XLIII. I will never enter into any conversation with my opponent's client, relative to his claim or defence, except with the consent, *and* in the presence of his counsel.

XLIV. Should the party, just mentioned, have no counsel, and my client's interests demand that I should still commune with him, it shall be done in writing only,—and no verbal response will be received. And if such person be unable to commune in writing, I will either delay the matter until he employs counsel,—or, take down in writing his reply, in the presence of others; so that, if occasion should make it essential to avail myself of his answer, it may be done through the testimony of others, and not by mine. Even such cases should be regarded as the result of unavoidable necessity, and are to be resorted to only to guard against great risk, the artifices of fraud, or with the hope of obviating litigation.

XLV. Success in any profession will be much promoted by good address. Even the most cautious and discriminating minds are not exempt from its influence; the wisest judges, the most dispassionate juries, and the most wary opponents being made thereby, at least, more willing auditors,—and this, of itself, is a valuable end. But whilst address is deservedly prized, and merits the highest cultivation, I fully concur in sentiment with a high authority, that we should be 'respectful without meanness, easy without too much fami-

liarity, genteel without affectation, and insinuating without any art or design.'

XLVI. Nothing is more unfriendly to the art of pleasing than *morbid timidity*, (*bashfulness*,—*mauvaise honte*.) All life teems with examples of its prejudicial influence, showing that the art of rising in life has no greater enemy than this nervous and senseless defect of education. Self-possession—calmness—steady assurance—intrepidity—are all perfectly consistent with the most *amiable modesty*; and none but vulgar and illiterate minds are prone to attribute to *presumptuous assurance*, the apparently cool and unconcerned exertions of young men at the bar. A great connoisseur in such matters, says, that 'what is done under concern and embarrassment, is sure to be ill done:' and the Judge (I have known some) who can scowl on the early endeavours of the youthful Advocate who has fortified himself with resolution, must be a man poor in the knowledge of human character, and perhaps still more so in good feelings. Whilst, therefore, I shall ever cherish these opinions, I hold myself bound to distinguish the arrogant, noisy, shallow and dictatorial impudence of some, from the gentle, though firm { and manly confidence of others—they who bear the } white banner of modesty, fringed with resolution.

XLVII. All reasoning should be regarded as a philosophical process—its object being conviction, by certain known and legitimate means. No one ought to be expected to be convinced by loud words—dogmatic

assertions,—assumption of superior knowledge—sarcasm—invective;—but by gentleness, sound ideas, cautiously expressed—by sincerity—by ardour without extravasation. The minds and hearts of those we address are apt to be closed, when the lungs are appealed to instead of logic; when assertion is relied on, more than proof; and when sarcasm and invective supply the place of deliberate reasoning. My resolution, therefore, is to respect courts, juries, and counsel as assailable only through the medium of logical and just reasoning; and by such appeals to the sympathies of our common nature, as are worthy, legitimate, well timed, and in good taste.

XLVIII. The ill success of many at the bar is owing to the fact that their *business is not their pleasure*. Nothing can be more unfortunate than this state of mind. The world is too full of penetration not to perceive it, and much of our discourteous manner to clients, to courts, to juries, and counsel, has its source in this defect. I am, therefore, resolved to cultivate a *passion* for my profession; or, after a reasonable exertion therein, without success, to abandon it. But I will previously bear in mind, that he who abandons any profession will scarcely find another to suit him; the defect is in himself; he has not performed his duty, and has failed in resolutions, perhaps often made, to retrieve lost time, the want of which firmness can give no promise of success in any other vocation.

XLIX. Avarice is one of the most dangerous and disgusting of vices. Fortunately its presence is oftener found in age, than in youth; for if it be seen as an early feature in our character, it is sure, in the course of a long life, to work a great mass of oppression, and to end in both intellectual and moral desolation. Avarice gradually originates every species of indirection. Its offspring is meanness; and it contaminates every pure and honourable principle. It can consist with honesty scarce for a moment, without gaining the victory. Should the young practitioner, therefore, on the receipt of the first fruits of his exertions, perceive the slightest manifestation of this vice, let him view it as his most insidious and deadly enemy. Unless he can then heartily, and thoroughly eradicate it, he will find himself, perhaps slowly, but surely, capable of unprofessional—mean—and finally, dishonest acts;—which, as they cannot be long concealed, will render him conscious of the loss of character; make him callous to all the nicer feelings; and ultimately so degrade him, that he consents to live upon arts, from which his talents, acquirements, and original integrity would certainly have rescued him, had he at the very commencement fortified himself with the resolution to reject all gains, save those acquired by the most strictly honourable and professional means. I am therefore, firmly resolved, never to receive from any one, a compensation, not justly and honourably my due; and if fairly received, to place on it no undue value; to entertain no affection for money,

further than as a means of obtaining the goods of life,—the art of *using money* being quite as important for the avoidance of avarice, and the preservation of a pure character, as that of *acquiring it*

✂ With the aid of the foregoing Resolutions, and the faithful adherence to the following and last one, I hope to attain eminence in my profession, and to leave this world with the merited reputation of having lived an honest lawyer.

L. LAST RESOLUTION. I will read the foregoing forty-nine resolutions, twice every year, during my professional life.

APPENDIX.

I. OF NOTE BOOKS.

'Brevitas Memoriae Amica'

It has often been a question whether the legal student derives from the practice of taking notes any solid advantage, and one fully commensurate with the necessary expenditure of time. A solution of this question can only be found by first considering it as applied to the *usual* manner of taking notes, which is founded on no principle, and regulated by no rule; and secondly, in reference to the most methodical and scientific modes by which such a practice may be directed. We have no hesitation in saying that a student would do better never to make a note, than to indulge in the customary mode; and, on the other hand, that there is no auxiliary so powerful, or so durably advantageous as noting, when properly regulated. That species of note-taking which consists in transcribing nearly all which a student reads, and which, like the practice of some lawyers in noting the testimony of witnesses, presents the *whole*, with all its wordy and immaterial appendages, is surely a great waste of time.

Common-place books, as to their matter and method, should vary with the progress of the student; for that which is highly proper for him who is advanced in his studies, would be altogether unsuitable to the mere tyro. In determining, therefore, on the utility of this practice, the student must be presumed to follow the most advantageous method; in which case, we do not doubt the justness of an affirmative answer.

It is a law of our nature that those impressions which simultaneously affect the mind through the medium of more than one sense, are more vivid and lasting, than where only one of the senses is excited. Writing is a species of *touch*, and is an act which, from the time and attention necessarily required, must be favourable to the memory. Besides this, there is a pride in our nature which revolts at the servile transcription of what is not understood, the student, therefore, will be stimulated to additional inquiry, and until he has sufficiently investigated the subject, judiciously to abridge his author, or extract the substance, he will not record it in his note book. The objects of noting are two; *first*, as a means of impressing knowledge on the mind, by selecting and extracting from much that which is valuable, and *secondly*, the possession of such a digest as may be frequently resorted to; which digest, being the work of the student himself, carefully and judiciously selected from an infinite variety of authors, and methodically arranged, must be familiar to him, and can be examined by him with more facility, for the solution of an occasional doubt, than perhaps any other work. In order to accomplish both of these objects, with the least expense of time, and with an assurance of freedom from the plausible objection that 'what is committed to paper, is but seldom committed to the mind,' we shall present to the student our opinion as to the different kinds of note books proper to be used; the order in which they should be taken up; and the particular method to be adopted in each.

In contemplating the mind in its gradual progress from the rudiments of any science, to that complete knowledge of it which leads to refinement and ^{the} censure, to that intellectual vision which, whilst it presents the science with all its harmonies, amplifies all its defects, the inquirer must perceive the necessity of adapting to each stage of his progress, a mode of investigation, and a method of recording its results, best suited to the particular state of mental improvement. This view of the subject is the result of experience, and is fully justified by

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that *a priori* reasoning, which presents itself to every one who maturely reflects on it. Some, perhaps, may think that this is imparting to a trifling subject an air of scientific importance, and attempting to fashion on *principles* that which should vary with the taste or whim of the student. We think not the simplest things in life lose none of their value by giving to them that philosophy which really belongs to them; and nothing should be deemed trifling which relates to the economy of time, improvement in knowledge, and the general benefit of students. We shall, therefore divide note books into the eight following kinds, the nature and use of which we shall, in their order, proceed to explain.

1. Note Book of Exceptions to General Principles.
2. Note Book of Abridgment of Statute Law.
3. Note Book of Remarkable Cases Modified, Doubted, or Denied.
4. Note Book of Leading Cases.
5. Note Book of Uncommon Titles.
6. Note Book of Obiter Dicta and Remarkable Sayings of Distinguished Judges and Lawyers.
7. Note Book of Books Approved or Condemned.
8. Note Book of Doubts and Solutions.

1. NOTE BOOK OF EXCEPTIONS TO GENERAL PRINCIPLES

The substratum of every science consists of certain elementary rules or first principles, which as they are generally the pure dictates of reason, and short and simple in their phraseology, find an easy access to the mind. These rules are necessarily numerous, and, with their exceptions and illustrations, constitute the entire learning of any science. Principles, owing to the universality of their expression, their reason, and application, glide almost imperceptibly into the mind, and

being once seated in the memory, seldom or never abandon it. That which is once forcibly impressed on the understanding, because fully comprehended, is not liable to forsake us, hence those rules which have been repeatedly tested by reason, and successfully applied to an infinite variety of cases, and finally adopted as principles, have a particular congeniality with the mind, and are welcomed to the memory as the offspring of philosophy. But *exceptions* have each a peculiar reason, requiring a special act of memory, and they seldom enter the mind so freely, or remain so willingly as general rules. In the case of principles the memory is often merely *passive*, but exceptions generally call on the *active memory*. A note book, therefore, which records exceptions, answers a double purpose; for as an exception proves the rule, a record of exceptions must necessarily be a depository of the principles or rules. We conclude therefore that the proper subject of a note book is exceptions, and not general rules. Exceptions limit the note book to a moderate size; and as they are dependant on peculiar reasons, and are more liable to change than general rules, they require some adscititious aid to establish them in the memory. The titles of this note book should be alphabetically arranged, and the law points, for the sake of reference from one to the other, should be numbered. We shall state the mode of keeping this note book, and by way of example, (under the letter B.) shall arrange the exceptions under their respective titles.

EXAMPLE OF NOTE BOOK OF EXCEPTIONS TO GENERAL PRINCIPLES.

Baron and Feme.

I. Feme-covert may sue and be sued as feme-sole in the following cases. 1. By custom of London, if she has traded there by herself, and is sued in the courts of that city. 2. Where baron is perpetually banished. 3. Where transported for a time, and contract was made before the expiration of this period. 4. Where the time has expired, but baron has not returned. 5. Where an alien husband deserts the country

II. Baron and Feme may testify for or against each other. 1 In case of high treason. 2. Of personal violence on the wife, or threat. Audley's case, 1 Sta. Tri. 265 Penn v. Stoops, Add. Rep 381 Lady Lawley's case, Bull. Nisi Prius 287. 3 In case of wife *de facto*, as where husband is indicted on Sta. 3 Hen 7, for forcible marriage, or where for bigamy. 4. Wife of bankrupt, *touching his estate*, by Sta. 5, Geo. 2, Cap. 30. 5. In civil actions where neither is a party, the wife is a good witness to discharge one of the parties to the action, *by charging her husband*, as in Williams v. Johnson, 1 Stra 505.

Bond.

I. Breach need not to be assigned. 1. Where bond is for payment of an entire sum in gross. 2. In case of bail bonds. 3. Of bonds given to the Lord Chancellor, by petitioning creditor.

Bills of Exchange.

* I. Though drawer had no effects in drawee's hands, from the date of the bill to its maturity, notice of non-acceptance must be given to him. 1. In case of acceptances on the faith of consignments from the drawer, not come to hand, 1 Bos. and Pull. 655. 2. Acceptances on the ground of fair mercantile agreements, 7 East 359. 3 Of a bill drawn by an agent on his principal, 3 Bos and Pull. 239, Clegg. v Cotton

The above will be sufficient to evince the utility of this species of note book. In No. 1, of title 'Baron and Feme' the student will find *five* exceptions to the general rule that feme-covert cannot sue, or be sued as feme-sole. These exceptions at once suggest the general rule, which therefore need not be set down. In No. 2, of same title, the general principle that neither in civil or criminal cases can husband and wife testify either for or against each other, is disclosed by the exceptions; which, resting on a reason peculiar to each, are not easily remembered. Under the title 'Bond,' are given the *three* exceptions to the general rule that, in declaring on a bond *with a condition*, plaintiff must state the condition and assign the breach. It is easy to remember this rule, but the exceptions do not readily occur.

In some cases the student will find exceptions to such rules as are themselves exceptions to the general rule. This

occurs in the exceptions stated by us under the title 'Bills of Exchange.' The general rule is, that 'a holder of a bill must give notice to the drawer of the drawee's non-acceptance.' The exception is, that 'it is not necessary to give such notice where drawer had no effects in drawee's hands from the date of the bill to its maturity.' but on this exception the student will perceive engrafted the three exceptions noted by us. When such a case occurs, it will perhaps be attended with some utility to place an * before the number, as we have done in the above example.

This note book may be commenced when the student arrives at the third title of this Course; for in reading the preceding matter, we think the student had better have no regular note book. He may occasionally set down his views or doubts, but as a practice we would discourage note taking until he has acquired something of a *legal mind*, by a cursory view of the great *outlines* of legal science.

II. NOTE BOOK OF STATUTES ABRIDGED

Another very suitable species of matter for a note book is the *substance* of statutes. This book should comprise a concise abridgment of all such *important* English statutes as are known, or presumed to be in force in the state in which the student contemplates to practise. Statutes are always exuberant in words, so that much time and attention are required to extract their meaning. It will, therefore, be found a very profitable exercise, in the course of a student's reading, closely to abridge every important section of such statutes, and to give these sections the same arrangement as in the original. These summaries will be found highly useful to the student through the whole course of his reading, and will often save him much labour in his practice. Although considerable time, and close application are requisite to the completion of such a note book, we doubt not that, eventually, it will be found that much time has been saved. It may perhaps be said, that it is the only

mode in which statutes can be well understood and established in the mind; for they cannot be abridged without more than ordinary attention, whereas, unless a person has a very special object in reading a statute, the mass of verbiage in which it is enveloped, is apt to occasion a hasty and cursory perusal. This species of note book, therefore, effects three important objects; *first*, it prevents a habit of negligently reading statutes, and accustoms the student to bestow on this branch of law an early attention, commensurate with its great importance, *secondly*, it much facilitates his progress in other departments of law; and as it early impresses on his mind an acquaintance with important statutory provisions, he contemplates the law as a progressive and improving science, and necessarily directs his attention to existing imperfections, and the various modes of remedy; he compares the common law with the statutory amendments, and views the whole, not as the arbitrary mandates of an unmeaning legislator, but as a system growing out of necessity, and resting on principles. *Thirdly*, such a note book ably executed, saves much time in the future prosecution of legal inquiries. Statutes, with all their plenitude of wordy expletives, cannot be reperused on the occurrence of every doubt, but if their substance has been well extracted, a glance of the eye over a statute thus abridged, will often afford more information than could be gained in half an hour's attentive reading of the original. The entire force of these observations can scarce be comprehended, except by those who have experienced the numerous difficulties to be encountered in the prosecution of legal investigations, especially those which arise out of statute law; and who have found the great waste of time arising from the want of proper aids, and the wonderful difference between the use of method and certain facilities, and the usual mode in which students prosecute their researches.

In this undertaking, the student should particularly attend to the distinction between *retrospective*, *explanatory*, and *declaratory* statutes; some being merely declaratory, some

explanatory, and others both. He should likewise attend to the operation of statutes which revive such as had expired, of those which repeal declaratory, and of those which repeal repealing statutes. In all of these cases the student should regard the different modes of *construction* suited to each, and as an appendix to his statute note book, he should not fail to insert all the more important points of construction, which have arisen on the different species of statute. This appendix should refer to the statute abridged, and this, in turn, to the construction, &c. in the appendix. The kind of statute, whether *retroactive*, *explanatory*, *declaratory*, *repealing*, *reviving*, &c. should be designated by a mark, as for example: retroactive by †, explanatory by *, declaratory by ¶, repealing by ||, reviving by ‡, &c. so that these distinctive marks may at once declare an important quality of the statute, for it will be found upon looking into the example of the appendix, to this note book, which we have given, that the distinction between statutes explanatory, retroactive, &c. is highly important.

EXAMPLE OF NOTE BOOK OF STATUTES ABRIDGED.

F.

No. 1. *Preamble.* Last clause of statute *De Finibus levatis*, 27 Ed. 1 viz. 'Fines shall be openly read twice a week after the discretion of the justices, in the mean time all pleas to cease. Fines should be of the greatest strength for the avoidance of strifes, and be final as formerly, but now used the contrary, to the universal trouble of the king's subjects therefore ordained' FINE
4 Hen 7,
Ca 24. Vid
Appendix F
No 1, 2, 3, 4

§ 1. Fines, after engrossed, are to be read and openly proclaimed in court in the same and three following terms, four days in each, during which all pleas to cease

§ 2. After proclamation, fine bars all persons, both privies and strangers, except *feme-covert*, *infant*, *persons in prison*, *out of the realm*, and *non-compos*, not being parties.

§ 3. Such right, title, claim, and interest, as any one, except parties, hath, when Fine is engrossed, is saved to him and his heirs, if he or they pursue such right, &c

by action or lawful entry within *five* years after proclamations.

§ 4. Such action, right, &c. as shall first grow, remain, descend, or come to all other persons *after* the Fine is engrossed and proclaimed, by force of a gift in tail or other cause *before* the¹ Fine levied, is saved to them, if they pursue their action, right, &c. within five years after such action, right, &c. accrued, descended, &c. in which case action will lie against the pignor of the profits.

§ 5. Feme-covert, non-compos, infant, one imprisoned, or out of the realm at the time of the fine engrossed, or accrual of the action, right, &c. are excepted, and they, or their heirs, have five years to pursue their action, right, &c. after removal of the impediment.

§ 6. Such excepted persons and their heirs for ever to be barred, in like form as parties and privies, if they respectively do not pursue the action, &c. within five years after removal of said impediments.

§ 7. The plea that none of the parties, nor any to their use, had at time of the fine levied, any interest in the lands, *saved* to all not parties or privies.

§ 8. All subsequent fines levied after the *common law* manner are to have the same effect as they would have had prior to this act.

§ 9. It shall be at the election of every one to levy a fine under this act, or at common law.²

FINE.

32 Hen. 8
Ca. 36 Vid.
Appendix. F
No. 1, 2, 3, 4.

No. 2. † * *Preamble.* Whereas by statute 4 Hen. 7, Ca. 24, Fines duly levied with proclamations are final, and, to avoid strife, conclude as well privies as strangers, with the exceptions therein mentioned, since which time it hath been doubted whether fines so levied, by such as have in the lands, &c. comprised in the fine, an interest in possession, reversion, remainder, or in use *in tail*, do immediately thereafter bind the heirs in tail, and those claiming to their use, to remove said doubts, and for a sure *interpretation* of said statute, be it enacted:

§ 1. That Fines *heretofore* levied, or hereafter to be levied according to said statute, by such as are of full age, of lands, &c. intailed to them prior to said fine, or to any of their ancestors, in possession, remainder, reversion, or use, shall after the fine is engrossed, and proclamations,

be an immediate bar against them and their heirs, claiming said lands by force of such intail, and against those claiming the same to their use.

§ 2. *Proviso.* This act not to extend to Fines levied by women, after the death of their husband contrary to statute 11, Hen. 7, Ca. 20, but said act to remain in full force.

§ 3. *Unimportant.*

§ 4. *First part unimportant.* This act not to extend to Fines of lands, &c. intailed by king's letters patent, or any act of parliament, whereof the reversion, at the time of the fine levied, was in the king.

C.

No. 1 †. § 10. Benefit of clergy and sanctuary taken from those who *heretofore*, or hereafter shall be duly attainted, or convicted of deliberate murder, poisoning, or house-breaking, by day or night, any person then being in the same, and put in fear or dread, or of robbery in the highway, or near to the same; or of the felonious stealing of *horses, geldings, or mares*, or of felonious taking any goods out of any parish church, or chapels, or found guilty of said offences by verdict, or who shall confess the same upon arraignment, or who refuses to answer directly according to law, or who stands wilfully mute. Clergy, in all other cases of felony, allowed.

CLERGY,
BENEFIT
OF.

1 Edw 6
Ca 12 Vid
Appendix.
C No 1

No. 2. * II. *Preamble.* As it has been doubted upon the statute 1 Ed 6, Ca 12, whether a person found guilty of feloniously stealing *one horse, gelding, or mare*, ought to be admitted to enjoy his or their benefit of clergy and sanctuary, it is enacted,—That all and singular person and persons feloniously taking or stealing any horse, gelding, or mare, shall not have his or their benefit of clergy or sanctuary, but shall be put from the same, as though he or they had been indicted or appealed for feloniously stealing of *two horses, two geldings, or two mares*, and thereupon found guilty by verdict, or confessed the same on arraignment, or stood wilfully or of malice mute.

CLERGY,
BENEFIT
OF.

2 & 3 Edw
6, Ca 33
Vid Appen-
dix C No 1

In this manner the student may abridge all the important British statutes in operation in the state in which he resides, all of which he will arrange alphabetically in this and in its appendix. The above are not to be regarded as examples of the *kind* of statutes which we would have him abridge. We have selected them, because the abridgment of any statute may exemplify the mode of abridgment, and chiefly for the purpose of shewing the nature and objects of the appendix, as the examples suggested themselves as particularly apposite. An example of the appendix alluded to may be of use. We select the letters F. and C. in the Statute Note Book, and of course, the corresponding letters in the Appendix.

EXAMPLE OF APPENDIX TO NOTE BOOK OF STATUTES
ABRIDGED.

F.

FINE. No. 1. In Macwilliam's case, Hob. Rep. 332, lord Hobart, speaking of these statutes, says that the first is the *text*, the other the *paraphrase*, that the cases of fines barring entails, since statute 32, Hen. 8, ought so to have been ruled upon the statute 4, Hen. 7, though the former had never been made

4 Hen. 7, Ca
24, 32 Hen. 8,
Ca 36 Vid
Statute Note
Book, F. No
1, 2

No. 2. In Zouch v. Bamfield, 1 Lev. 76, it is said that statute 32, Hen. 8, Ca 36, is not *properly a statute*; nor do fines receive any strength or virtue from it, but it is only a *construction* of statute 4, Hen. 7, and as sta. Hen. 8, construes 4 Hen. 7, to extend to fines levied by tenants in tail, the estate tail is adjudged to be bound by this latter statute, and not by the explanatory statute, which is rather a *judgment* upon sta. 4, Hen. 7, than a *new statute*.

No. 3. Sta. 32, Hen. 8, Ca. 36, is an example *first* of the power of parliament to expound laws 1 Black. Comm. 160; *secondly*, of the retrospective operation of a statute, for it affected fines *heretofore levied*. 1 Burr. 115, 6 Bac. Abr. 370; *thirdly*, that it is the act *explained*, and not the explanatory act which governs the case, T. Raym. 259, T. Jones, 237.

No. 4. Explanatory statutes are said never to be extended by *equitable construction*, for they are them-

selves legislative constructions. Carth 396, Poph 91, Cro. Car 33, Salk. 524, 9 Co. 31, a This rule, however, is denied by Hobart, 2 Roll Rep. 500.

C.

No. 1. The necessity of this *second* statute illustrates the rule that penal statutes are to be construed strictly Sir Philip Yorke, afterwards lord Hardwicke, said *arguendo*, that this statute was merely *declaratory*, viz that the stealing of *one* horse was not clergyable, which shewed that parliament, acting judicially, gave their judgment that it was felony without clergy, by virtue of the *first* act, the second being only to remove doubts, and not to make *a new law* Leach Cases in Cr. Law, 6.

CLERGY,
BENEFIT
71
1 Edw 6,
Ca 12, § 10
2 & 3 Ed 6
Ca 33 Vid
Statute Note
Book, C No
1, 2^d

In recommending this kind of abridgment of the statute law, we by no means advise the student, at any one time, to undertake such a task. We wish it to be the gradual and almost imperceptible work of the entire period of his legal study, and perhaps of several years after. It may be taken up occasionally, and a statute or two abridged. The comments will of course be noted in the appendix, as they occur in the course of his reading. If this note book be properly attended to, the student, in the course of four or five years, will possess, at the expense of little, because gradual labour, a highly valuable summary of all the leading English statutes, accompanied by a collection of the most enlightened views as to their operation, &c. which have been given by distinguished judges, &c. He must not be appalled by the apparent magnitude of this undertaking. Let him remember the importance of the result, and that it is to be effected, '*non vi, sed sæpe cadendo.*'

III. NOTE BOOK OF REMARKABLE CASES MODIFIED, DOUBTED, OR DENIED

The student may insert in this note book such great or leading cases as have been modified, doubted, denied, or held to be inaccurately reported, which should be arranged either

under proper titles, or *alphabetically*, sometimes accompanied by a concise statement of the point so modified, &c. He may commence it with the chapters recommended in third section, Title III. of this Course.*

EXAMPLE.

A.

Acherly v. Vernon, 1 P. Wms 173, *doubted*, 1 Sch. & Lef. 5.

Akin v. Barwick, 1 Stra 165, 'that delivery to A. to the use of B. upon a precedent condition is not countermandable, but vests the absolute property in B. before agreement.' Lord Mansfield, in *Cow.* 117, said 'that the *judgment* in this case was right, but the *reasons* were wrong, that the true ground was, that the trader refused to accept the goods and returned them'

Allen v. Bower, 3 Bro. C. C. 149, *doubted* in 1 Sch. & Lef. 37

B.

Blakeway v. Earl of Stafford. 2 Eq. Abr. 579, *doubted*; and said to be erroneously reported. 1 Sch. & Lef. 109.

Beynon v. Gollins, as reported in 2 Bro. C. C. 323, and *Dick.* 697, is *erroneous*. Vid. 1 Sch. and Lef. 259

C.

Crofton's case, 1 Mod. 34, (per lord Mansfield, 1 Burr. 545,) '*has been often denied*.'

Campbell v. Leach, *Ambl.* 749, a passage therein *doubted*, in 1 Sch. & Lef. 65

IV NOTE BOOK OF LEADING CASES.

The utility of this species of note book has, we flatter ourselves, been made sufficiently apparent in the twenty-eighth note to the Fourth Title of this Course.† We have only to observe in addition, that the note book must be judiciously divided into titles; and nothing more than the names of the leading cases inserted under their respective heads; and, if reported by different reporters, he should note where *best* reported. This note book may be commenced at the same time with the preceding.

* Vide ante p. 174.

† Vide ante p. 388.

V NOTE BOOK OF UNCOMMON TITLES

The student will occasionally find important law points arranged in indexes under improper titles; or that they are not to be met with under the heads to which he would be apt to refer he will likewise find that the law of some important doctrines is no where regularly treated, but is to be sought in an infinite variety of books. In many instances, no doubt, the former difficulty will be proved by subsequent reading and examination, to have been imaginary, be this as it may, the circumstance of thus humouring his taste, will prove favourable to his acquisition of knowledge; a note book, constructed after his particular notion, must prove serviceable, as he makes all the matter there deposited, more peculiarly his own. For example, the student can find in but few or no indexes, or imagines so, the titles '*Court and Jury, respective duties of,*' '*Damages, measure of,*' '*Count Special,*' '*Right of Beginning,*' '*Onus Probandi,*' '*Gil,*' '*Caveat Emptor,*' '*Chose in Action,*' '*Time and computation of time,*' &c. he arranges alphabetically in his note book, these and other uncommon titles, or what he conceives to be such; he will afterwards resort to his note book as a familiar and almost certain source of information on the particular topic; he will there often find at a view, not only the particular point of inquiry, but the law of every other similar inquiry. If for example he desires to know the rule or measure of damages in the action of Covenant on Warranty, his note book presents him at once with the rules and principles which have been adopted on the subject of damages in all the actions, real, personal, and mixed, he will receive more information from a few pages of his note book, than the indexes, &c. of perhaps one hundred volumes would furnish him.

The student should commence this note book with the chapters recommended in Bacon's Abridgment.*

* Vide Particular Syllabus, Title IV sec. ii p 286

VI. NOTE BOOK OF OBITER DICTA, AND REMARKABLE SAYINGS
OF DISTINGUISHED JUDGES AND LAWYERS

Incidental opinions of distinguished judges, sentiments of learned counsel *arguendo*, and the peculiar doctrines of enlightened law-writers, often carry with them a species of authority, nearly equal to the deliberate judicial decision. The *obiter dicta* of such men as Coke, Kenyon, Holt, and Mansfield, must ever command great respect. Coke, perhaps, with all his knowledge, is less entitled to this deference as his learning was too apt to extravasate. Fearne, and Hargrave, and Comyns, cannot speak or write but with oracular force 'I find it so laid down,' says lord Kenyon in 3 Du. and Ea. 64, 'by Ld. Ch. Ba. Comyns in his Digest. He has not, indeed, cited any authority for this opinion; but *his* opinion *alone* is of great authority, since he was considered by his contemporaries as the most able lawyer in Westminster Hall.' The books of reports, likewise, frequently contain observations of judges on the points adjudicated by them, which for soundness, liberality, perspicuity, terseness, &c. have been much celebrated. The object of the present note book, therefore, is to record important *dictums*, opinions *arguendo* of distinguished lawyers; the peculiar opinions to be found in the legal works of such men as Fearne, Hargrave, &c. and the remarkable sayings, and comprehensive opinions, of illustrious judges. Such a collection would prove eminently useful in enforcing and embellishing juridical arguments.

EXAMPLE.

TESTATOR, 1. 'I verily believe that in almost every case where by
INTENTION law a *general devise* of lands is reduced to an estate *for*
OF. *life*, the intent of the testator is thwarted, for ordinary
people do not distinguish between real and personal
property' Ld. Mans Doug. 763.

2. In *Moss v. Gilmore*, Doug. 282. Cases being cited where mortgagor was called *tenant at will* to mortgagee, lord Mansfield observed—"that a mortgagor is not tenant

at will to the mortgagee, for he is not to pay him rent, he is only so *quodam modo* Nothing is more apt to confound than a simile. When the court or counsel call a mortgagor a tenant at will, it is barely a comparison he is like a tenant at will'

MORT-
GAGOR

3 'It is correctly argued,' says lord Mansfield, *Jones v. Randal*, Cow. 37, 'that notwithstanding this contract is not prohibited by any *positive* law, nor adjudged illegal by any *precedents*, it may be decided to be so upon *principles*. The law of England would be a strange science indeed, if it were decided on precedents only. Precedents serve to illustrate principles, and to give them a fixed authority, but the law of England, which is exclusive of positive law enacted by statute, depends upon principles, and these principles run through all the cases according as the particular circumstances of each have been found to fall within the one or the other' Vid *infra* 8.

PRECE-
DENTS.

4 'The law of granting new trials depends so much upon the existing circumstances that the court are to have discretionary power, and rules are difficult to be given.' Pratt C J Roll. Rep 2.

NEW
TRIALS

5. Per Ld. Mans. *Fisher v. Prince*, 3 Burr. 1363. 'It has been objected against staying proceedings in trover on producing the goods that this is in effect a motion to bring the goods into court, which cannot be done as the court does not *keep a warehouse* It is pity that a *false conceit* should, in judicature, be repeated as an *argument*. The court does not keep a warehouse' What then? What has a warehouse to do with ordering the thing to be delivered to the plaintiff?

TROVER

6. Per lord Mansfield, 1 Du. & Ea. 5. 'That a feme-covert can hold no property and cannot be sued is the general rule; but then it has been *truly* observed that as times alter, new customs and new manners arise, these occasion exceptions, and justice and convenience require different applications of the exceptions within the principle of the general rule.' *Quere the soundness of this doctrine.*

FEME
COVERT.

7. Per Ld. Mansfield, *Rex v Genge*, Cow 16. 'The case cited is an express authority, and is reported in two books, each of which states the case in the *same way*. It

REPORTS

is, however, objected that these are books of no authority, but if both the reporters were the worst that ever reported, if they substantially report a case in the same way, it is demonstration of the truth of what they report, or they could not agree.'

PRECE-
DENTS

8. Per Ld. Mansfield, *Robinson v. Bland*, 1 Black. Rep. 264. 'Where an error is established, and has taken root, upon which any *rule of property* depends, it ought to be adhered to by the judges till the legislature think proper to alter it, lest the new determination should have a retrospect and shake many questions already settled: but the reforming erroneous points of *practice* can have no such bad consequences, and therefore may be altered at pleasure, when found to be absurd or inconvenient.' Vid. *Supra* 3.

MONEY.

9. 'Tis pity that reporters catch at quaint expressions that may happen to be adopted at the bar or bench, and mistake their meaning. It has been quaintly said that '*the reason why money cannot be followed is because it has no ear-mark;*' but this is not true. The true reason is upon account of its currency, it cannot be recovered after it has passed in currency.' Per Ld. Mans. *Miller v. Race*, 1 Burr. 475.

EQUITY
COURT.

10. 'In construing agreements, I know no difference between a court of law, and a court of equity. A court of equity cannot *make* an agreement for the parties, it can only explain what their true meaning was, and that is also the duty of a court of law' Per Ld. Mans. in *Hotham v. E. In. Comp. Doug.* 278.

COVENANTS
DEPEN-
DENTS, &c.

11 'The dependence or independence of covenants is to be collected from the sense and meaning of the parties, and however transposed this may be in the deed, their precedency must depend on the order of time in which the intent of the transaction requires their performance.' Per Ld. Mansfield, *Kingston v. Preston*, Doug. 691.

LORD COKE.

12. Per Ld. Mans. *Rex v. Cawle*, 2 Burr 858. 'Lord Coke, in Calvin's case says that *Berwick* is no part of England. In Calvin's case there was *no question* concerning the constitution of Berwick. What was dropped about it in this case was a mere *obiter* opinion, thrown out by way of argument and example. My lord Coke

was very fond of multiplying precedents and authorities, and in order to illustrate his subject, was apt, besides such authorities as were strictly applicable, to cite others, not applicable to the question under judicial consideration.'

13. Where things are settled and rendered certain, it will not be so material how, as long as they are so, and that all people know how to act Per L.J. Chan. Parker, 1 P. Wms 452. CERTAINTY OF LAW

14. Per lord Mansfield in *Corbett v. Polenitz*. 1 Durn. & Ea 8 'This is the general rule. But then it has been properly said, that as times alter new customs and new manners arise, these occasion exceptions, and justice and convenience require different applications of these exceptions, within the principle of the general rule.' Sed per lord Kenyon, 5 Durn & Ea. 682. 'I confess I do not think that the courts ought to change the law so as to adapt it to the fashion of the times. if an alteration of the law be necessary, recourse must be had to the legislature for it.' JUDICIAL LEGISLATION.

15. Per Vaughan, C. J Vaughan's Rep. 382. 'An extra judicial opinion, given in or out of court, is no more than the *prolatum* or saying of him who gives it. An opinion given in court, if not necessary to the judgment given of record, but that it might have been as well given, if no such, or a contrary opinion, had been broached, is no judicial opinion, no more than a *gratis dictum*. But an opinion, though erroneous, concluding to the judgment, is a judicial opinion, because delivered under the sanction of the judge's oath, upon deliberation, which assures it is, or was, when delivered, the opinion of the deliverer.' EXTRA JUDICIAL AND JUDICIAL OPINIONS.

VII. NOTE BOOK OF BOOKS APPROVED, OR CONDEMNED

The student will ascertain that some of the sources of his information are pure, and unquestionable, being the productions of men of learning, wisdom, probity and industry; that others are of dubious authority, and some, no wise to be relied on; as they are the hasty and indigested offspring of shapeless and unphilosophical minds, the elaborated works of ignorance,

the loose notes of juvenile authors, the speculations of the sciolous, or the premature and unfinished labours of the sons of indigence. As the merits and defects, of the infinitude of books with which the lawyer is obliged to have some intercourse, cannot be ascertained by any individual in the usual mode, viz. by that attentive examination which is bestowed by critics, whose vocation is reading, for the purpose of commendation or censure; it is highly proper that the student should avail himself of the labours and judgments of others; and that he should listen to the consecutive opinions of the wise and learned, who for centuries have been studying these works, and have passed judgment on them. The utility of this species of information is well known to such as frequently, and minutely investigate moot and unsettled law points. In order to reconcile numerous, varying and conflicting opinions, to nicely weigh and extract from them the real and wholesome principle, such inquiring students must be well acquainted with the sources whence they seek for light; the character of legal authors must be familiar to them. It will be a useful inquiry, whether a reporter, for instance, were a man of sound morals, and stable character; a good lawyer; of matured mind; estimated by his brethren; attentive to his duties; in easy circumstances, &c.; for in points, resting on authorities nearly balanced, the question, as to the merits of the reporter, or legal author, becomes important, and frequently decisive. If principle or the weight of analogy incline in a direction opposite to authority, this authority, if of high standing, will be apt to prevail; whereas, if of doubtful or sullied reputation, the principle or analogy would be unhesitatingly established. This note book may be commenced by the student contemporaneously with his first legal studies, because the bibliographical notices we speak of, are often found scattered through the volumes first put into his hands, and be collected occasionally, and without labour; as they generally consist of but a few lines.

[We are gratified to find our views as to the utility of this species of note book (as well as of the third and sixth kinds,) confirmed by several publications, both in England and in this country, long subsequent to our first edition. We retain them, however, in the present edition with scarce an addition, and we can refer the student to the publications alluded to, for more ample illustration, and also with the view of shortening his own labours in forming such note books; as his object will now be, merely to add to these collections, what is new, or has escaped these authors' researches.—*Vide Greenleaf's Collection of Cases overruled, doubted, or limited in their application.* Portland, 1821. American Jurist, vol. viii. Art. 3. 'Characters of Reports,' vol. xii. Art. 1. 'Characters of Law Books and Judges' and Ram on the Science of Legal Judgment, *passim.* London, 1834.]

EXAMPLE.

1. Almost any thing that may be proved by citations from them.' *Arguendo*, 2 Burr 690. MOLLOY AND MALLINES.

2. 'These notes were taken, 10 Wm. 3, when lord Raymond was young, as short hints for his own use' but they are too incorrect and inaccurate to be relied on as authorities.' 1 Burr. 36, 3 Term Rep. 261, 263. LORD RAYMOND

3. 'Brother Viner is not an authority. Cite the cases that Viner quotes; that you may do.' Per Foster Jus. 1 Burr. 364. VINER'S ABRIDGMENT.

4. 'Eighth Modern is a miserably bad book.' 1 Burr 8th, 10th, 11th 386. 'The *obiter* saying in 10th Mod. if it were a book of better authority than it is, would signify nothing, when the *determinations* are the other way.' Per *Ld. Mans* 1 Burr. 153. '11th Mod. is a book of no authority,' *arguendo* Cow. 16. Per Buller Jus. Doug 61. MODERN REPORTS.

5. Lord Mansfield spoke extremely well of Bynkershoek's writings, and especially recommended his *Quæstiones Publici Juris.* Vid. 2 Burr. 690. BYNKER-SHOEK.

6. Lord Mansfield absolutely forbid the citing Barnardiston's Rep. in Chan.; as it would be only misleading students to put them upon reading it. He said it was marvellous, however, to those who knew the sergeant, and his manner of taking notes, that he should so often BARNARDISTON.

- stumble upon what was right; but yet there was not *one* case in his book which was so throughout' 2 Burr. 1142.
- LORD NOTTINGHAM. 7. 'The book called "Reports in Chancery," in lord Nottingham's time, is a book of no authority.' Per Ld. Chan. Hardwicke, 3 Atk. 334, 1 Wils. Rep 162.
- CLARK. 8. 'Clark's *Praxis Curiae Admiraltatis Angliae* is a book of undoubted credit' Per Ld Hardw. 1 Atk. 296, 3 D. East. 339, No.
- SIDERFIN. 9 Per Cur. 2 Vent. 243. 'We are not satisfied with the opinion reported by Siderfin in Spignorell's case. He was then a *young reporter*.'
- ATKINS. 10. 'Atkin's Reports is a book which, of late, has been often questioned' 2 Woodd. Lectures, 362.
- NOY. 11. Per Twisden J. 1 Vent. 91. 'As for the case from *Noy's Rep.* I wholly reject that authority. It was but an abridgment of cases by sergeant Size, who, when he was a student, borrowed Noy's Reports, and abridged them for his own use' Vid. also Co. Litt 54, a.
- BUNBURY. 12. 'Mr. Bunbury never meant that those cases should have been published. They are very loose notes.' Per Ld. Mans. 5 Burr. 2658.
- MOSELEY. 13. Lord Mansfield forbid the reading of Moseley's Reports. Vid. 5 Burr. 2629; also 3 Anstr. 861.
- SHEPPARD 14. Per Willes, C. J. 2 Wils. 78. 'I rely much upon Sheppard's *Touchstone of Common Assurances*, which is a most excellent book.'
- KEBLE. 15. Keble's Reports denied to be authority in Cow. 15, and called in 3 D. E. 17, 'a bad reporter,' and in 3 Wils. 330, 'a very inaccurate reporter.'
- FREEMAN. 16. Some of the cases in Freeman are well reported, but the book is of no authority Cow. 15.
- CARTHEW AND COMBERBACH. 17. Carthew and Comberbach are equally bad authority. Per Ld. Thurlow, 1 Bro. Ch. Ca. 97 Ld. Kenyon, 2 Du. Ea. 776, says that Carthew is *in general* a good reporter.
- FITZGIBBON. 18. Per Ld. Hardw. in 3 Atk. 610. Fitzgibbon's Reports is a book of no authority, but the case of *Holt v Ward* is well reported.
- GILBERT. 19. 'Books of practice,' says Jus. Blackstone, 'are all pretty much upon a level, in point of composition and solid instruction; so that, that which bears the latest

edition is usually the best; but *Gilbert's History and Practice of the Court of Common Pleas*, is a book of a very different stamp, and though (like the rest of his posthumous works) it has suffered most grossly by ignorant or careless transcribers, yet it has traced out the reason of many parts of our modern practice, from the feudal institutions, and the primitive construction of our courts, in a most clear and ingenious manner.' 3 Bla. Com. p. 271. Note

20. Lord Nottingham, in the duke of Norfolk's case, 9 Chan. Ca. 35, said that 'he considered Leonard's Reports one of the best books that had lately come out.' LEONARD.

21. In 1 Keb. 676, Hide C. J. after citing a case from Popham, says that 'he vouches this case because he heard it, and not for the authority of the book, which is none.' Of the same opinion is lord Holt in 1 Ld Ray. 626. POPHAM.

22. Per Ld. Hardwicke. 'Levinz, though a good lawyer, is sometimes a very careless reporter' LEVINZ.

23. Style's Reports are particularly important as containing the only common law cases reported for some years during the usurpation. STYLE

24. In the case of Lloyd v. Johnes, 9 Vez. jun 54, lord Eldon remarks of Mitford's Treatise on Pleadings in Chancery, that 'it was a wonderful effort to collect what is to be deduced from authorities speaking so little what is clear, and that the surprise is not from the difficulty of understanding all he has said, but that so much can be understood.' MITFORD.

25. Per Bull. J. Doug. 83. '12 Mod. is not a book of 12 MODERN any authority.'

26. Lord Coke, in his preface to 10 Rep. says that Plowden's Commentaries are rendered particularly valuable, as they were compiled principally for the improvement of students. Barrington, speaking of some cases reported by Salkeld, observes that 'he cannot indeed say that these cases are well reported, which must not surprise, as sir Edward Coke asserts that there are four erroneous cases in that most accurate of all reporters, Plowden, when the whole number contained in his Commentaries amounts only to forty-three. Vid Barr Observ. on 1 Rich. 2, note (t) Mr Hargrave observes, that it may

be well to state that the *English* edition of Plowden's Commentaries, which must deservedly bear as high a character as any book of reports ever published in our law, has a great number of additional references and some notes, and that both of these are generally very pertinent, and shew great industry and attention in the editor. Co. Litt. 23. a.

- DYER. 27. Per Buller J. 2 Ter. Rep. in speaking of the edition of Dyer's Reports in 1688—'The marginal notes thereon are good authority, being written by Ld. Ch. J. Treby.'
- CARTHEW. 28. 'He is generally a good reporter,' per Ld. Kenyon 2 T. Rep. 776; Willes' Rep. 182.
- CROKE. 29. Upon citing Croke, the court paid no respect to it, and said it were better it had never been printed. Vide 2 Keble, 316.
- FREEMAN. 30. Sir John Milford observed of Freeman's Reports, that, though not of much reputation, they are better than they are supposed to be: their ill character arose from the fact of their having been stolen by a servant, and published without the family's privity—and the Lord Chancellor admitted that they are generally good. 3 Ves Rep. 580.
- LEVINTZ. 31. Per Ld. Mansfield, 3 Burr. 2731. 'Levintz is a much better reporter than Keble.'
- MOORE. 32. 'Moore is a very accurate reporter.' Per Ld. Ellenborough, 2 Smith, 126.
- COX'S
P. WMS. 33. The Master of the Rolls observed in 4 Ves. 467, 'I cannot omit to acknowledge the great obligation of the bench and bar to Mr. Cox for his edition of P. Williams.'
- SAUNDERS. 34. Per Willes, C. J. 'Saunders was so very learned a man, and so well skilled in pleading, no other authority need be mentioned after him.' Willes' Rep. 479.
- SCHOALES
AND
LEFROY. 35. 'This is a book which I am persuaded will give great information to the profession upon many important points of equity.' Per Ld. Eldon, 11 Ves. 592.
- MOSELEY 36. Per Chancellor Kent. 'Moseley reported cases during the time of Ld. King. It is fortunate we have even so imperfect a view of the decisions of that eminent scholar, to whom Mr. Locke bequeathed his papers and library.' 1 Kent's Comm. 460.

37. Lord Eldon, who is said to have been a better **MOSELEY**, judge of the merits of the work than Ld. Mansfield who condemns it, says that Moseley is a book of considerable accuracy. 3 Anstruther, 361.

38. 'Tidd's Practice is a book of very great authority.' **TIDD**
Per B. Vaughan, 2 Younge & J. 562.

39. 'Williams' Notes to Saunders' Reports is now **WMS**
esteemed a text book of our law.' Per Tindal, C. J. 9 **SAUNDERS**,
Bing. Rep. 637.

40. 'Sugden's Treatise on Powers is a book of great **SUGDEN ON**
authority, and to which the professional public are much **POWERS**.
indebted.' 2 Brod. & Bing. 535.

The above example will sufficiently illustrate the utility of this species of note book. Let not the student, however, quietly repose on the opinions of others; he has a judgment of his own, which should be exercised, he should regard such a note book as an *auxiliary*, not as an *oracle*. He should read with the inquiring spirit of a philosopher, able and willing to form opinions, but, at the same time, let him respect the judgments of the learned. Whilst, with Boyle, he regards '*authority* as a long bow, the effect of which depends upon the strength of the arm which draws it, and *reason* as a cross-bow, of equal efficacy in the hands of the dwarf and giant,' he should be well assured that it is *reason* which he summons to his aid, and not that self-confidence and vanity which sometimes characterize juvenile minds.

VIII NOTE BOOK OF DOUBTS AND SOLUTIONS.

In a science as extensive and complicated as law, difficulties will often be encountered, which the mind is not sufficiently matured to solve; and which no one is at hand to explain. In this situation we are unwilling to abandon the pursuit, and to advance is impossible. The only relief from such a dilemma is, to record our doubts in a note book, under the hope that at some future day, after the sources of information

have better developed themselves, and the mind has been gradually strengthened, the solution will present itself. This note book is attended by great and peculiar advantages; it occasions much reflection; compels investigation, and all future reading becomes, in some measure, tributary to it. The plan of this note book is as follows. The doubts, as they arise, are to be *numerically* inserted on the left hand page of the book. And the solutions, or the sources of information, are to occupy the right; these answers or references are to be designated by the same numbers as the doubts or queries. When a question is answered, or nothing more than authorities cited, there should be a marginal note to the question, referring to the answer or references, and the page of the note book. As the solutions and references will occupy more space than the questions, they cannot be placed, in all cases, opposite to each other; hence there is a necessity for referring to the page of the note book, as well as to the number of the solution. The correspondence of the numbers designating the questions and answers is useful, as it more certainly, and at once points out their connection.

It is no inconsiderable advantage attending this species of note book, that it gives the student a faithful picture of his gradual improvement; it places before him an accurate chronicle of his legal career; and he may often have occasion to be amused at the simplicity of some of his early queries, and also to be pleased with the progressive maturity of his inquiries, and the proportionate correctness and solidity of his answers. Some of his doubts he will solve, perhaps, on the day in which they were inserted; others, months, and even years after; but let the solution come when it may, he will remember his former difficulty, and referring to the *index* of his note book for the query, will be able to add the answer.

II. OF DEBATING SOCIETIES, AND OF MOOT COURTS.

EMINENT success at the bar would seem to require three things, either of which, however, may in a very great degree be possessed, with but comparatively little dependence on the others. We allude to first, a familiar knowledge of law in the abstract,—that is with the mere *theory*. Secondly, an acquaintance with law in the concrete,—that is with *practice*; and thirdly, an easy, natural, and impressive mode of communicating our knowledge, *orally* to others. The first is gained almost exclusively through the medium of books, or private study—the second by applying the knowledge thus gained to the actual concerns of life, with a view to their formal presentation to courts, juries, &c —and the last by verbally communicating to these tribunals, the result of our deliberations, on either, or on both. A student is often pretty well versed in abstruse legal learning, who falters at its practical application, and feels a deep despondency at seeing much inferior, and less informed minds apparently familiar with the modes of its formal presentation. Others again, have all the requisite knowledge, both of the theory and *modus operandi*; have an admirable business tact, and are even well qualified to make a *written* argument, as solid, as ingenious, who, from want of experience, from morbid timidity, or other causes, can scarce venture to address a court or jury. All of these are evils which must be overcome, and it is our object in the following observations on debating societies and moot courts, to present to the student, and to junior lawyers, a plan, which we trust, may prove a powerful auxiliary in the acquisition of *practical* knowledge, and of the art of speaking.

Lord Chancellor Fortescue, in his admirable little manual, *De laudibus legum Angliæ*, excites his illustrious pupil to diligent study by a number of arguments in praise of the laws of England. The force of these was felt, but the Prince (as

many students, and even lawyers of our day are) was dismayed at the boundless extent of the science; and, with despondent feelings, said, 'there is one thing which agitates my mind in such a manner, that, like a vessel tossed in the tumultuous ocean, I know not how to direct my course;—it is, that when I recollect the number of years, which students of law employ, before they acquire a sufficient degree of knowledge, I am apprehensive lest, in studies of this nature, I should consume the *whole of my youth*.'

The apprehensions of the young prince were very natural, but his fears were easily subdued by the amiable preceptor, for the laws of England, in those days, were not, as they now are, 'the collected wisdom of ages, combining the principles of original justice with the endless variety of human concerns.' The jurisprudence of our day is vastly more extensive; it has kept equal pace with the growth of knowledge generally, and even those sages of the law, my lords Coke, and Bacon, before they could attain 'unto the depths of the learning' of our times, would have to become severe *students* of law for many years. The prince, moreover, had no occasion to *master* the science even as it then stood; hence the chancellor informed his pupil that 'it will not be necessary for him, at a great expense of his time, to scrutinize curious and intricate points of discussion;' *principles alone* would be sufficient for those who are not actually to minister in the temples of justice. Thus were the prince's apprehensions allayed. But those who are to be counsellors, or judges, if they duly appreciate the nature of their high calling, have just and greater reasons now to entertain the fears expressed by the young prince to his distinguished preceptor: they must even go much further than he apprehended, and consume, not only the whole of their *youth*, but the whole of their *life*; and this too, with a zeal and devotion unremitting, and a steadiness of purpose, which allows of no compromise.

If this be, as it certainly is, the case, is it not reasonable that students, and junior lawyers should, with great alacrity,

avail themselves of every facility, which the enlarged spirit of our times may suggest for their advancement? It must be confessed, that whilst the boundaries of our science have been greatly enlarged, the means of a philosophical and methodical study of the science have been, also, much increased. but, we think, not in a just proportion; and even those which have been tendered, have not always been as generously and zealously availed of, as might be expected from those who were cultivating a pursuit so honourable, laudable, and profitable.

If there be then any of the junior lawyers who may be inclined to the opinion that the proposed exercises of debating societies and moot courts are suited for *students* only, and, that on coming to the bar, they have assumed the *toga verilis* of their profession,—our brief reply to them is, that all past experience has shewn that those alone have become eminently learned in the law, who have been *students* throughout their life; that in this science, alone, we find there are no *masters*, but all are *pupils*;—that its truest votaries have been those who have been content never to cast off the *prætexta*, for the *toga*, and, in fine, that all liberal and expanded minds, ardent in the pursuit, have chosen to find no *resting place*, but have, ‘with ever growing, new delight’ gained one horizon, only to find another of equal extent.

We think it is impossible for any one to take, even a superficial view, of the vast body of the law which must be familiar to an American jurispudent, without agreeing with me that it demands an undivided heart and mind, and a feeling of thankfulness to those who have removed impediments, and urged us on without despondency. To those who, with folded arms, can rest content with moderate attainments, we presume to offer no attractions. We are only ambitious to rouse the energies of those who respect the *science*, and desire its *highest honours*. We tender no inducement to such as believe there is a short and ‘royal road,’ by which all may be attained with but little labour. My lord Mansfield never saw the setting sun of that day which had not added to his generous store of

knowledge; and, perhaps, that day never dawned on him, which was not accompanied by a fresh desire for a further insight into the *arcana* of his profession,—of which, indeed, he was ‘the living voice and oracle.’ Those truly great and expanded minds, also, which now preside in the supreme tribunal of our country, and which have been devoted for very many years to the acquisition of legal knowledge, modestly, and patiently, and eagerly listen to all that may be imparted to them; and, not unfrequently, decline a decision until a whole year has passed round,—and this, too, on points, which a young practitioner might perhaps dispose of in a much more summary manner. If minds, then, of the highest order, and the richest cultivation, find in this science the task of a well spent life, we hope to be excused, if we invite young lawyers to unite with students in a scheme of reciprocal advantage,—in a plan that will greatly facilitate them in their profession,—and, in time, redound to their honour,—their happiness, and eventually, we trust, to their emolument in that which, we think, is too often considered the *chief good of life*.

The proper study of our science has been a favourite theme with the author for many years past. As this is a land peculiarly dedicated to liberty, it should be the desire of every American that the science of law may be thoroughly cultivated, since rational liberty can only be sustained and perpetuated, by a wise administration of legal justice. As far as an humble individual can aid the diffusion of law knowledge,—assist the aspiring student,—and stimulate the young practitioner, the author confesses it is his ambition to be useful. From that portion of the bar, whom narrow views, and false shame will not prevent from uniting in a laudable and useful enterprise, we solicit a hearty co-operation, without which nothing very effectual can be done, when left to the unaided exertions of students.

To most *students* of law the anticipation of the period which is to terminate their novitiate; to bring them into con-

tact with clients, and place them in the presence of courts of justice, and their professional brethren, is accompanied with feelings rather of anxiety, and even despondency, than of pleasure, and of hope. They may know themselves to be well grounded in *principles*; but they doubt their familiarity with the *sources of minute knowledge*. They may have cultivated a *legal mind*, but they still doubt the readiness and faithfulness of their memory, on a sudden emergency. They may heretofore have *written* able law arguments, but they have not cultivated the *ars loquendi*, and they perceive that the logic, eloquence, and knowledge of the bar must often come unsolicited, and be the spontaneous and instant growth of a deep and richly improved soil. The details of practice present them with a thousand minute doubts and inquiries never before thought of;—and difficult, if not impossible to be found in the books. In this state of the mind their judgment often becomes bewildered; difficulties are magnified—the courts become surrounded with an air of mystery, exciting awe, despondency, and even disgust—judges, lawyers, jurymen, and even the uninitiated and ignorant crowd of spectators, become invested, in the young practitioner's disturbed imagination, with a character for learning, and a disposition to examine with severity, which further acquaintance often dissipates, or, at least, greatly diminishes.

To remedy, as far as may be practicable, this disadvantage, students of law have frequently resorted to *debating societies*. These, though highly useful, are by no means as effectual a remedy for the evils we have intimated, as *moot courts*, where *fictitious law proceedings*, and *supposed cases* are brought and prosecuted with a strict regard to the forms of pleading, the rules of evidence, and all the decorums of forensic disputation.

We shall first briefly state our views in regard to *debating societies*, and then proceed to exhibit an outline for the organization, and conduct of a *moot court*—a tribunal which, if brought into effectual operation, according to our enlarged views on the subject, cannot fail to prove a great auxiliary in

forming almost veteran practitioners out of timid, doubting, and sciolous students.

The utility of these debating societies has been questioned by some; but what point is so simple as not to be disputed, or misunderstood? It would be thought, we imagine, very strange entirely to proscribe *conversation* on the score of the many sophisms advanced in it, the many unprofitable arguments it occasions, the improper passions it excites, and the thousand wrong opinions it gives birth to—the sole arguments usually adduced in opposition to debating, which however, is little more than conversation conducted in a more regular form, and adjusted by stricter rules of argumentation.

We admit, indeed, that debating societies may prove, not only useless, but prejudicial, when conducted as they sometimes are: still their utility, when composed of such as love truth, and enter into debate as one avenue of approach to it, is equally certain.

While therefore, it appears to us thus absurd wholly to condemn these juvenile associations, because of some incidental evils, we acknowledge how unprofitable they frequently are, from the idle speculation, the absence of control and method, the captiousness, and even violence which occasionally prevail in them.

There is in science so large a body of truths whose right understanding is of great practical utility, that it is at best but serious idleness to throw away time in the discussion of topics useless in themselves, and more so from the improbability of ever arriving at any certain conclusions concerning them. Even in the sciences least subtle and abstruse, there is so much unavoidable error, so much involuntary sophism, so much difficulty in demonstrating even substantial truth, that there can be no need of the assumption of false positions, or the support of ingenious sophistry to sharpen the wits of disputants, and to exercise them in the arts of logical offence and defence. A judicious selection, therefore, of useful subjects, and moderation, candour, and patience in their investigation,

and oral discussion (qualities without which formal controversy is no less than conversation and writing, utterly uncondusive to truth,) are certainly necessary to render such associations what they are capable of becoming—very profitable schools to those who deem worth attainment, not only the *possession* of knowledge, but the art of agreeably and successfully *imparting* it.

The man of books must sooner or later emerge into the world; must find even his most cherished theories controverted; contend often and long in support of opinions he had looked on as almost self-evident; demonstrate many errors whose very manifestness renders demonstration irksome, and difficult; and encounter many false views of life, no less than of science, which his own sincere love of truth prevented ever occurring to his mind. There are few retired students, who, on coming into society, and the active pursuits of life, have not experienced something of this—if there be even a partial remedy for this, it should be sought, and improved. Debating societies, while they accustom him to opposition, may instruct him, at the same time, in the arts, and means of countervailing it: they may teach much of that rapid recollection, that quickness of penetration, that felicity of illustration, and above all, that facility in arranging and methodizing a various subject, so useful in the ordinary intercourse of life, and so essential in the sudden and extemporaneous contests of the bar. The study of the *practical proceedings* of courts of justice; of that ‘sure oracle of the law,’—*good pleading*,—and of that searcher into the diversified concerns of human life,—the *doctrine of evidence*,—we say the *study* of these subjects, though it may require vigorous comprehension, and habits of patient thinking, demands, however, no very peculiar modification of talent. Whoever can be made to understand with facility, may soon comprehend the philosophy of each; whoever can think minutely, may soon be made master of their niceties; but as to the *practical use* of these doctrines, it is considerably otherwise. Men who in solitude think correctly,

and reason clearly, are sometimes in public, masters neither of their thoughts, nor their words. The happy exposition of a subject, the ingenious elucidation of difficulties, the fluency of utterance, the rapidity and skill of forensic evolutions are impracticable to themselves, and irresistible in others. Some minds too are of a temperament too irascible to endure the triumph of an adversary, the detection of their own errors, or, even opposition to their opinions. On such tempers, we have been asked, if these assemblages for disputation did not exert an unhappy influence? In both the cases we have adduced, if the *want of readiness*, in the first, be not so great as to be incapable of improvement, and the *warmth of temper*, in the second, such as to be hopeless of remedy, we believe debating societies are perhaps the best schools of discipline to impart, by dint of habit, *promptness* in the one case, and *self-restraint* in the other; if the reverse, failure is certainly less painful here, than in more public and responsible situations. Some cases there undoubtedly are, where these faults of talent or temper are so glaring, that we should dissuade those who are so unfortunate as to possess them, from ever connecting themselves with a society of disputants; but then we should go further, and advise them to detach themselves altogether from a profession, whose pursuits would continually expose them to similar situations of embarrassment and vexation.

Our recommendation of debating societies must not be understood, however, of these promiscuous assemblages of young men, which chance, idleness, and whim, sometimes collect together.

In the common intercourse of society we studiously avoid the litigious, the sophistical, the vain, the arrogant, and the ignorant;—and no little congeniality of mind is requisite even among those who only meet to be intellectual antagonists. Students, therefore, in establishing these societies, should aim to associate with themselves only those who are engaged in the same pursuits, animated with the same ardour of study, and possessed of the same general views and dispositions;—

in the presence of these circumstances, and under judicious regulation, these societies cannot fail, we think, to prove eminently advantageous.

The biographies of distinguished statesmen and lawyers are replete with examples of the beneficial effects of these associations; and, in some instances, their destiny in life appears to have been somewhat controlled by impressions and habits contracted in them. Burke's fondness for the pursuits of a statesman, if not first acquired in debating societies, was certainly first manifested, and greatly augmented in them. It is stated of that able politician that the acquaintance with history which marked his future life, and which tended to the development of much of his political wisdom, was fostered by occasional meetings of the Incipient Historical Society,—‘an institution,’ says the biographer of Curran, ‘which, as a school of eloquence, was univalled, and has given to the bar, and the senate some of their highest ornaments.’

It is recorded of that most estimable lawyer, sir Samuel Romilly, that although his extreme diffidence had been considerably lessened by his associating with his young friends in their debates, yet that when he came to the bar, his apprehensions were almost painful and overwhelming. It is highly probable that had not the keen edge of his constitutional diffidence been somewhat blunted, by his occasional discussions before a debating society, the world might have been deprived of one of the most splendid geniuses, and the bar of its brightest ornament. Had the young lawyer yielded to his embarrassment, such were his sensibilities, that total failure must have ensued, and he might have shrunk into retirement, from which nothing could have urged him.

Lord Mansfield, also, furnishes another example of the salutary effect of these associations. Mr. Butler, in his *Reminiscences*, relates that while a student of the temple, young Murray, with some other students, had regular meetings to discuss legal questions, that they prepared their arguments with great care, and that his lordship afterwards found

many of these juvenile exertions useful to him, not only at the bar, but upon the bench. Numerous other instances might be presented, were it necessary. We will only add, that it is related of one of the most profound of our own lawyers, that his astonishing talents were first disclosed in a debating society, established by the young physicians of his native city. His eloquence, ingenuity, and zeal in debate were so commanding as to attract the attention of a distinguished judge, who induced the young orator to abandon the worship of Esculapius, for the more animating, wide, and ambitious exercises of the forum—how fortunate the change has been, no one can doubt who has witnessed the eloquence of the late William Pinkney.

But if the aid to be derived from such combinations be manifest, how much greater to the law student must these advantages be, when the association assumes all the regularity, the complete organization, and the duties of a court of judicature! The origin and history of Moot Courts in England need not be here stated. Neither in that, nor in this country have they ever, as far as we know, been so organized as to afford the student most of the advantages of a court; and, indeed, in this country, though they have assumed the name of moot court, they have generally differed but little, if at all, from the ordinary debating society. Our views contemplate something far different. We desire to have the practice, in this mock tribunal, to conform, in every essential respect, to the rules, modes of procedure, and argumentation adopted in the best regulated courts of our country.

Practice in a moot court thus constituted, affords the student and young lawyer many advantages wholly unknown to the mere debating society: it brings him, on the easiest terms, into a gradual, but certain acquaintance with the *modus operandi* of the various courts of judicature: it familiarizes him with the mode of applying legal principles. it renders him not only acquainted with the sources of knowledge, and the art of tracing out a point of law, from its first crude and undefined

dawning, to its full establishment, but it instructs him in the means of presenting his claim or defence in a lawyer like manner, and according to the most approved precedents of pleading: it unfolds to him the practical application of many rules of evidence founded on the soundest logic, which had hitherto rested in his mind only as so many abstract principles. it teaches him, if we may use, in part, the language of sir William Jones, the mode of extracting from the pleadings, like the roots of an equation, the true points in dispute, and of so analyzing a cause as to refer these points, with all imaginable simplicity to the court or jury; further, it enables him to test his memory and judgment, and to ascertain the *certainty* of his knowledge. it dispels that despondency which had haunted him in regard to the details of practice, and the difficulties of *ex tempore* argumentation, by showing him the true meaning of the former, and by convincing him that the art of speaking eloquently, and logically, is not difficult when based on solid acquirements, and undertaken, in every instance, with appropriate zeal. and lastly, practice in a moot court would seem to possess, at once, all the advantages ascribed by lord Bacon to *reading, writing, and conversation*;—*tail. kin.* the first making a *full* man, the second an *exact* man, and the last a *ready* man.

It is, indeed, surprising that in England, where these advantages have been experienced in a considerable degree, the Inns of Court, and of Chancery should no longer afford the means of legal instruction of any kind,—enrolment in them being at this time wholly nominal. The young student in that country is left entirely to himself, and the ancient Mootings, Readings, and other exercises of their once renowned schools for legal education, are now altogether unknown. Even the *Term Lectures* have been abandoned for more than a half century; and the Vincian professorship, so distinguished by the names of Blackstone and Wooddeson, and which would more than have supplied the loss of the facilities of the Inns of Court and Chancery, terminated with the labours of

the latter gentleman, without even an effort to continue, or to revive it. The high expectations, also, which were subsequently raised by the eloquent and learned political lecturer of Lincoln's Inn Hall, were suffered to expire, after but little more than the splendid and very able Prælection of sir James Mackintosh.

We have already had occasion to observe that, except some positive rules (introduced merely with a view to a rule of some sort, the number of which is indeed but very few) the principles of practice depend on those of the law itself, and are derived naturally, and necessarily from it. The difficulty, therefore, consists not so much in ascertaining the relation of these rules to the principles of law, when they are once explained, as in apprehending, readily, and *ex tempore*, the application of these rules of practice to the circumstances of a particular case. This is a difficulty common to the apprentices of all sciences, having a practical application to affairs: it is an incapacity which, in all minds, is remedied only by the frequent exercise of this comparison between principles and facts, and the repeated observation of the *relation* between them. Hence we see that the true point to be gained is not so much the actual knowledge of a certain amount of points of practice, as it is a certain *habit of mind* by which the principles acquired in the *study* of the science are readily and certainly applied to individual cases. New points will perpetually arise, and can therefore be solved, as they present themselves, only by holding the clue in the shape of these legal principles.

This being granted (and we presume it is sufficiently clear) it would seem immaterial to the acquisition of this much desired promptness of mind,—this skill in reverting to principles, and instantly applying them as a solvent in our practical difficulties,—I say, it must be immaterial whether the *facts* which we have to deal with be *real* or *fictitious*,—whether we are quadrating with the rules of our science an *existing* or a *supposed* case,—or, finally, whether we prepare for trial and

argument the cause of a *client*, or an imaginary case stated for discussion in a mock tribunal. Indeed there exists, in these *supposed* cases, an advantage, not necessarily belonging to one of actual occurrence, since they may be designedly so complicated as to present a variety of aspects, and a great number of principles; or, on the other hand, they may be as simple and elementary as we please, so as to adapt them to every stage of a student's progress; and further, they may sometimes be cases already decided in the books, and celebrated for the very complication to which I have just alluded. Or, they may be cases pending in courts, or such as are probable to be there discussed,—or they may be points in which the student has taken a particular and lively interest, but in which his doubts could never be solved by his own exertions or, lastly, these points may be made to increase in difficulty, so as to keep suitable proportion with the expansion of his knowledge, and his powers of investigation. Thus is it that this system of factitious practice may be rendered completely institutional, and methodical. Actual practice, on the other hand, is, from its nature, the reverse,—it may present *early* what can be solved with facility only *late* in the practitioner's course, and the contrary. In this case, as in some others, fiction may be called the essence of truth.

It may, perhaps, be admitted that knowledge thus acquired in a moot court, will not be so diligently sought, or so distinctly remembered as that which is gained in the actual practice of courts. To this is attached all that zeal which springs from either expected reputation, or contemplated profit—motives to action which in the nature of the mind cannot be supplied by any others. But if the whole object cannot be attained, this should be no reason for neglecting the acquisition of part, especially when it must be conceded that the mock procedure has also its own peculiar advantages. It should likewise be borne in mind that the practitioner is to perfect, in the actual transaction of business, the lesson which he has already conned in these theatres of mooting and pre-

paration. The soldiers of antiquity were certainly not the worse warriors for the sports and games which mimicked the movements and the hurry of the fight; nor were the champions of the tournaments, and mock encounters of more recent times, without their reward, as the tact there acquired served them in stead, on more serious and perilous occasions.

There may undoubtedly arise habits in the mind, as well as in the body; and as the artificer, or the practiser of certain accomplishments, as music, for example, arrives, after long practice, at a rapidity and delicacy of touch almost inconceivable to the unskilled, so the professor of any practical science learns the ready, and almost intuitive application of principles, which for years he has been wont to compare with facts and circumstances. From this power of habit arises also the difference between speculative students, and practical actors in business. The last is always hastened in the operation of his mind by the pressure and impulse of immediate exigency, whereas the former by this very circumstance often becomes confused, and nearly incapable of proceeding; and having generally had leisure to weigh, and to compare, acquires, indeed, a certain method, but at the same time, slowness of reflection, which unfits him for extemporary efforts. The practice of a moot court, we think, is admirably calculated, not only to impart much practical knowledge, but in a great degree to confer on students those habits of business, and that collectedness and well founded confidence, so essential in the argument of causes, whether in the senate or the forum.

If, therefore, we cannot in the mock proceedings of a moot court, supply those motives to the zealous and industrious acquisition of knowledge and habits of business, which the appetite for fame or lucre administers, we can at least teach the student and the young lawyer, in some degree, to draw forth from their minds the principles which slumber there, and to learn their relations to certain modes of circumstance; we can teach him readiness and adroitness, promptitude of

resource, self-possession, and what is not the least, the habit of clothing his conceptions in appropriate language

It is not the most uncommon fault of the solitary speculatist, that conceiving his subject with clearness in his own mind, and having mastered the chain of deduction by which he has reached his conclusion, he forgets that others are not in possession of the same clue, and require to be led to the inference by the same chain by which he himself has attained it, and the links of which he has almost forgotten. The art of popular speaking is, in fact, the art of addressing to hearers, for the most part unskilled in examining the action of their own minds, a plain and familiar series of arguments, each obvious in itself, and adapted to the ordinary range of understanding. True *tact* in this is the fruit of successive experiments only. It is long before the advocate can persuade himself in what degree those reasonings must be simplified for his hearers, which to himself already seem so simple, and analyzed to the last degree of plainness. We, of course, here allude chiefly to discussions before a jury, in which, as a general rule, the utmost simplicity should be observed, without the tedious and idle exposition of the obvious. This plain and elementary, but yet solid mode of argumentation, is sure to command attention; and, from its perspicuity, cannot fail, if it be entitled so to do, to persuade or convince. And a portion of this masculine simplicity, and elementary investigation may be carried with great advantage, into the most learned discussions of law points, before courts ever so enlightened. The proper medium, indeed, between triteness on the one hand, and obscurity on the other, is, we confess, extremely difficult to be attained;—but in this, we can suggest no other guide than the *good sense* of the speaker. The foregoing observations apply with peculiar force to all discussions before the mock tribunal we are desirous to see fully established throughout the country.

In regard to these associations for improvement in the science, and art of the law, whether they be debating societies or

moot courts, no one can justly hesitate as to their utility who will observe for a moment, the natural propensity of those to *associate*, who have a *community* of pursuit, whether scientific or mechanic. This principle of association can justly be referred to nothing else but that natural inclination which men have to speak of what concerns them to such as a common interest makes attentive listeners, or skill and experience useful instructors. If, therefore, the natural desire thus to interchange thoughts binds men together, and strikes out improvement, whilst it begets emulation, can there be any reason why this kind of association should prove less useful when regulated by method, determined to particular objects, and kindled up by that fire of rivalry which springs up in men whenever a common aim is proposed? Let us not disdain, therefore, in the acquisition of a vast and multifarious science, an aid to which men so naturally betake themselves in the most simple and the most ordinary objects of pursuit; nor, to borrow a simile from a mock encounter of a more warlike nature, disdain the use of the lance because in the keener and closer engagement of the combatants, it must be abandoned for the sword or the dagger.

We would not conceal, however, that a tribunal of this sort, though eminently useful, is a very different field of contention from that of actual business. Apart from the differences to which we have already adverted, another is to be found in the different degrees of excitement which the latter administers to the more *interested* passions of our nature. An actual point of advantage to be gained, begets in the antagonists more obstinacy, more craft, more ungenerous sophistry, and instigates to less candid methods of litigation, than a mere supposed case, or a mere speculative point. To meet *these* require more civic courage and presence of mind than are to be easily, if at all, acquired in these schools of more generous disceptation; and those who have engaged warmly and eagerly in the exercises of the last, often shrink from the dishonest arts and petty subtleties of daily business. The

young practitioner, moreover, will sometimes have to encounter the uncandid praises, the galling irony, the unfeeling sarcasm, and the disingenuous replies of a haughty antagonist who, reposing with the utmost complacency on an expansive reputation, and forgetting the days of his own youthful ambition, and modest but ardent hopes of distinction, feels, or affects to feel, towards the reasoning of his young opponent, the utmost indifference,—lavishes upon him, without measure, a flood of insult, in the shape of flattery,—and overwhelms his arguments with a mass of good natured satire. At other times the young practitioner must expect to meet in the conflicts of the bar, with those who will not, or who cannot follow him through the mass of learning, which his own familiarity with the books, and his deep and zealous study of his cause has enabled him to present to the court. He will find that his learning, however necessary, and appropriate it may be, and however kindly received by the court, will be treated by his opponents, either with total neglect,—a pregnant sneer,—or a bold assertion that the whole is unpertinent to the issue, and flowed *ex abundanti doctrina, non apte disposita*. The experience and the courage to meet these must therefore be left to be acquired in their proper school,—the school of the world. In the *fictional* forum he may be taught to draw readily on his resources, to embody his thoughts in just diction, to arrange his forces with method and science for the combat, but his courage and equanimity in the *real* one, and most of the other moral qualities which enter into the composition of forensic ability, he must draw from actual contact with the rudeness and perplexities which embarrass the course of practical affairs. The true utility of every thing is best seen, and best applied to our purposes, when its defects and incapacities are also stated,—when we know precisely, what an agent will do, and what it will not.

We have been thus plain in exhibiting what we conceive to be the real and comparative advantages of debating societies, and courts of mock procedure, because expecting from them

more than is just, we allow them less merit than is actually their due. We would only further remark, that in regard to either species of association, almost every thing that is to insure complete success, depends mainly on the *student's own* zealous, persevering, and decorous conduct. The best regulations are in vain, if the students themselves do not sustain to the utmost, the great objects in view; and, in the success of the proposed tribunal, all other means are useless, when its practitioners cease to feel a lively, growing interest,—or to support with their utmost ability, the individual who presides over its business. In respect to debating societies we would, in conclusion, remark that their failure has sometimes arisen from the character of those who compose them. the young are apt to be dazzled with the subtilties of logic;—with false eloquence, and general declamation: their subjects, also, are often chosen in conformity with these prevalent tastes;—their debates are not regulated by *authority*, and by those who might prune the declaimer's wings, and recal the wanderers in debate. Habits of considering a topic are thus contracted, which, joined to the causes already indicated, sufficiently show why the hero of a debating club may disappoint expectation, and fails in the true and just business of life. At the same time these defects are not altogether inevitable, and incurable. In a moot court, by the plan which we propose now to submit, we hope they may be in a degree, and perhaps, entirely avoided.

What has been said has sufficiently disclosed our general designs. It is now time to state the fundamental regulations which have occurred to us as fit to be adopted in the organization of the proposed court.

- 1 The numbers of its practitioners should be adequate to conduct the business of the court with perfect ease, so as not to call, too largely, on their time, or to interrupt the progress of their prescribed studies or professional engagements.

2. Business should be so apportioned, and conducted, that each member may have an equal chance of learning all the

details of business, so that there be no monopoly either of the practical matters of the court, or of the debating of questions.

3. The moot court should exercise the jurisdiction, and strictly pursue the practice observed in the following courts.—

1. County Court.
- 2 Orphans' Court
- 3 Court of Appeals.
4. Court of Chancery
5. District Court of U S.
- 6 Circuit Court of U. S
7. Supreme Court of U S *

4. In order to conform as strictly as possible to the practice of the foregoing courts, there should be seven distinct dockets, in which all the appropriate entries are to be made by the clerk of the moot court, whose duty it will also be, to take in charge all papers filed; to prepare records in such important cases only, as the judge shall deem best calculated to illustrate the practical proceedings of courts, and finally, to perform all the essential duties of the clerks of such courts respectively.

5. The rules existing in the said actual courts are to be observed by the moot court, with no other variation than what may, from time to time, be found to result from the nature of a court of fictitious jurisdiction.

6. Any member may practice in all of the moot courts, or record his name as a practitioner in any particular court. It should be the duty of every member to see that the proper entries are made by the clerk in all of the cases under such member's charge. Counsel should themselves lay the proper rules, and direct the entries, so that the clerk shall in all cases act ministerially under the direction of the counsel. If, however, the clerk should doubt the correctness of any proposed entry, he should make the entry in a rough docket, kept for

* The jurisdiction and practice of these seven courts are recommended, as they are the courts found in most of our states. It is to be understood, however, that the moot courts that may be established by students and young lawyers in any state, will conform to the organization, and modes of practice of the courts known to the jurisprudence of their respective states

the occasion, until the court's opinion thereon be ascertained, after which the authorized entry shall be made in the clerk's docket.

7. Such rules for the government of the moot court, sitting as either of the said courts, as are *not* to be found in the existing rules of the courts, whose jurisdiction and practice it professes to pursue, should be prepared by the judge of the moot court, aided by a committee of its practitioners; and any member to be at liberty to suggest to the court and bar, any rule which he thinks it would be expedient to adopt.

8. The judge of the moot court, in relation to the business of the court, the preservation of order, the admission and expulsion of members, &c should possess unlimited powers, and in the exercise thereof there should be no comment on, or appeal from his decision. It is supposed that less evil would result from arbitrary power, in such a tribunal, than from the debate and contention that might otherwise arise—*order* being the first law of life, and the surest means of expediting all business.

9. The members of the court should annually appoint two *vice judges*, whose duty it should be to hold the courts, only in the absence of the judge. These vice judges to be called *first* and *second* vice judges, one only of whom shall sit. Should the judge and vice judges be absent, the bar to appoint a vice judge *pro tempore*.

10. The vice judges to be, *ex officio*, *Readers*, with powers and duties similar to those possessed by Readers in the Inns of Chancery.

11. With the exception of the vice judges, none to be appointed *Readers*, unless he be a junior lawyer, or a student of two years standing, or upwards. The judge may appoint annually three Readers, who when once appointed shall forever retain their title, and privileges. It to be the duty of the vice judges, as well as those specially constituted Readers, at least once a year, and not oftener than three times, to *read* and *expound* to the assembled students, and members of the moot

court, an essay, or opinion on any question of law he may select; in which case it will be expected that every one shall be present. These Readings to be carefully transcribed by each Reader, or by the clerk, into a book provided for that purpose.

12. The moot court to be open for business nine months in the year, during which period there should be three sessions, the *first* to commence on the 1st of October, and continue until the 1st of February: the *second* session to commence on the first of April, and terminate the 1st of July. The period intervening between the first of February and first of April to be called the '*middle session*,' during which time the vice judges alternately, or at their pleasure, to hold the court, or at the election of a majority of the whole bar, the middle session may be wholly omitted, and a debating society may be constructed in lieu thereof.

13. During the two regular sessions the court to meet every Monday, and every other Saturday. No other business to be done on Saturday than that which is preparatory to the argument of causes,—such as the *call of the dockets*, *making all proper entries*, *filing declarations*, *pleas*, &c., *entering and justifying bail*, *making up issues*, *filing demurrers*, *motions*, *rules on the sheriff*, *craving over*, *references to arbitration*, calling the *judicial* and *subpœna* dockets, and finally all other collateral matters which constitute the practice of each court, and tend to prepare the cases for argument, on *cases stated*, *special verdicts*, *general* and *special demurrers*, &c. &c. The dockets of the different courts to be taken up in such order as may suit the convenience of the judge.

14. Motions, rules on the sheriff, and other incidental questions to be argued by only one counsel on each side. And no case whatever to be argued by more than three counsel on each side.

15. Causes, with *consent of court*, may be docketed on a *case stated*, in which case no declaration, or other proceeding need be filed. All other causes to be instituted, and prose-

cuted with a strict adherence to legal forms, and the rules of the court.

16. No action to be brought, or case stated with a view of arguing the same, unless the question has been previously submitted to the court in writing, for approval or rejection

17. Every member will institute at least one suit for argument, or other disposition, once a fortnight, and file the same with the clerk on any day except Monday, that being the day assigned for the argument of causes.

18. All writs to be made returnable on Saturday of every week; and the declaration, short note, or titling may be filed with the clerk on any day, *Saturday, the return day*, and Mondays excepted.

19. Monday, in each week to be employed in the argument of causes, whether on the merits, or any incidental question. The dockets to be taken up in such order that a cause in each court may be successively argued, and this too, in the order of the seven dockets as already enumerated.

20. Should an argument not be finished on Monday, it shall be adjourned to the next succeeding Monday. Causes of great intricacy may be continued from time to time, until counsel are prepared, but not longer than sixteen terms, that is during the period of one session,—after which it must be dismissed, unless counsel should peremptorily engage to argue it on the following Monday.

21. Equity causes, those of the Admiralty, the court of Appeals, and the Circuit and Supreme courts of the U. S. when argued in the moot court, under the circumstances hereafter mentioned, should occasionally be argued on the *actual records* of those respective courts, in which case, when practicable, the *printed statements* should also be procured, and used by the counsel and the court; and when not obtainable, the counsel to prepare similar *written statements*

22. Equity causes, whether for argument, or decree, are to be prosecuted with a strict adherence to the practice and rules of the High Court of Chancery of the state, or the Circuit

Court of the United States, according to the court in which the suit is pending.

23. The original, appellate, and concurrent jurisdiction of the several courts ought to be strictly maintained. Proceedings may be stayed by *injunction* from the chancery and circuit court, as the case may require, and all equity causes to be prosecuted in those courts only, and in such cases the moot judge will grant or refuse, sustain or *reverse* injunctions in strict conformity to equity principles and practice.

24. Causes in the moot court may be argued on *records* of cases pending, or formerly pending in any appellate court, but no cause *then pending* ought to be argued in the moot court, unless with the *written* consent of all the counsel engaged in such *real* proceeding.

25 The business of an Orphans' court is to be conducted in the moot court, so as gradually to unfold the practice of that court under the laws of England, and the testamentary system of the state in which the moot court is established and as the proceedings of the Orphans' courts in the states, have been generally too loose, and irregular, practitioners in the moot Orphans' court should consult the most approved *formulae*, and the purest sources of information on the law, and procedure generally, of ecclesiastical courts

26. A *punctual* attendance to be expected from all the members, not only that the argument of causes may proceed without any interruption, but that the *practical* details of business may be advanced Attendance on *Saturdays*, therefore to be insisted on, particularly as those who may be familiar with the ordinary routine of practice, will be too often inclined to absent themselves on that account,—forgetting that the association imposes a duty on them to impart their knowledge to others, and to look for their compensation at some future period, when their younger brethren shall become more skilled

27. A strict adherence, in arguing causes, to the point in debate, and a studious avoidance of all personal, or offensive

allusions, to be rigidly enjoined, and the severest forensic decorum enforced.

28. Such junior members of the bar as may practise in the moot court for two years, should be entitled to perpetual membership, provided that during that period they shall have pronounced three *Readings*, or served as vice judges during one session.

29. The court, at its convenience, should deliver a written opinion on all causes of sufficient importance to require it

We have now finished the view proposed to be given of the general design, and the organization of the court which we desire to see established by students and young lawyers throughout the country. Time and experience would, no doubt, mature it into a better form; but, if suffered to go into operation on the plan we have stated, or even on a basis of much less extent, it cannot fail to prove a very powerful means of advancing students and young lawyers in their profession; a profession which, of all others, requires a willing adoption of every means for its acquisition, a profession only honourable when well understood;—a profession profitable and laudable only when sustained by good morals, and good talents industriously cultivated, and finally, a profession the most ennobling, or the most degrading, as its pursuers are virtuous and learned,—or unprincipled and ignorant.

We confess that some apprehensions are entertained that our zeal for the establishment of moot courts throughout our country, will be but poorly reciprocated, as well by students as by junior lawyers. This would certainly not be the case were they to take a *coup d'œil* of that ample field which is before them, and consider how much they have to toil and cultivate in it, before they can hope to occupy the foremost ranks in their high vocation. If, indeed, they are content with moderate attainments in the science generally, and even something beyond this, in detached portions, they may pursue the 'even tenor of their way,' perhaps, without mortification,—but they surely can never hope to reap those delightful gratifi-

cations which spring from a thorough knowledge of the vast whole, and from a commensurate and enduring reputation, awarded to those alone who have coveted the science with unabated ardour.

Were the moot court composed of fifty or sixty members, a third of whom should be junior lawyers, its business would be so conducted by them as to render it a source of certain and great improvement; the results of which could not fail to be in time strongly reflected from the *bar*, the *bench*, and the *profession* generally

With these remarks, explanatory of our views on this subject, we shall leave it to the students throughout the country to say whether these plans, in whole or in part, shall be put into execution or not.

III. FOUR DISTINCT COURSES.

[§ The student on referring to pages 53 and 54, will find that the courses presented in the thirteen principal Titles, and in the nine Divisions of Auxiliary Subjects, are addressed to four distinct classes of students; and that each class is invited to select his course. We have also taken care that the *second* course should be indicated by omitting all works, &c. to which the letter E is affixed. that the *third* course should be ascertained by ejecting all to which the letter e is affixed, in addition to those marked by E; and that the *fourth* course would eject all marked by *, leaving the student afterwards the option as to the residue to adopt the first, second, or third courses. All of this seems to be sufficiently easy and practical; but for the removal of every possible difficulty, we now present a brief analysis of all the syllabuses contained in these titles and divisions; and so arrange it as to present the intended four distinct courses in as clear a point of view as possible; admonishing the student, however, by no means to permit the following summaries to interfere with his careful study of our work, in the mode prescribed in the Advertisement, and Proem.]

FIRST COURSE.

[This Course consists of the entire work, and is designed for such students as have time and inclination to study thoroughly every branch of legal science before they engage in its practical duties. It would probably occupy seven years. If there be no such students, they will then enter upon the

phy and bibliography, in addition to the matter furnished in the course of our volumes, may be sufficient, as these are topics which he will have occasion to refer to very often in after life.]

DIVISION IV.

LEGAL REVIEWS,* ESSAYS, JOURNALS, &c.

[The remarks made on the previous Division equally apply to the present. We however, recommend to the student who adopts this second Course, to read as many of the Articles in the *American Jurist*, and in the *London Law Magazine*, as he conveniently can. In respect to the Continental legal periodicals, we particularly recommend the *Paris Thémis*—not doubting that after he has accomplished his regular studies, and becomes an industrious practitioner, he will not fail to resort with alacrity to the numerous materials we have furnished under this head; and that he will, by all means, make himself equally familiar with many others, (possibly of greater excellence,) as they, from time to time, are given to the world; this full acquaintance with the progress of our science being altogether essential in all who aim at merited elevation in their profession.]

DIVISION V.

CODEFICATION AND PROPOSED AMENDMENTS OF THE LAW.

[This is a continually growing subject. We have prescribed no particular course of reading,—but nearly all of the present sources are now submitted to the student. He should not fail to read the articles we have selected from the *Jurist* and *Law Magazine*, and such others as may, from time to time appear in them or similar works, leaving the treatises or larger works to a period of more mature judgment, in after life.]

DIVISION VI.

MEDICAL JURISPRUDENCE.

[The student who has carefully read the whole of this Division from page 697 to 705, will be at no loss to make his own selection of a few works under the present head. We would, however, recommend the following as particularly suited for the mere law student. 1. The selections made from the London Law Magazine, and the American Jurist. 2. Beck's Elements of Medical Jurisprudence. 3. Smith's three works.]

DIVISION VII.

MILITARY AND NAVAL LAW.

[We refer the student to our concluding remarks at page 713, 714. We hope sufficient has been stated in this Division to secure the subjects from customary neglect, and to shadow forth its general outlines. It would be well for the student to read at least *Titler* and *Maltby's* works, leaving all others to a more convenient season.]

DIVISION VIII.

LOGIC.

[On this important and much neglected subject we have been as ample in our remarks as is consistent with our plan, and we trust it will receive a due share of the student's attention. We particularly recommend him to read *Kirwin*, *Jardine*, and *Whately*, before he comes to the bar.]

DIVISION IX.

PROFESSIONAL DEPARTMENT.

[This last and crowning topic we cannot too urgently recommend. It is of vital importance, not only to honourable success at the bar but to happiness in every collateral pursuit—

at home or abroad. This Division we trust will be frequently resorted to. We have made the best selection in our power, and hope they will all be carefully studied at least within a year or two after coming to the bar.]

THIRD COURSE.

¶ This course ejects all works, &c. designated by e. and of course ejects all designated by E. It is designed to meet the views of those who desire to hasten to the bar, after a careful study of about three years. For the convenience of such students we now select from the Syllabuses all that remains for this Course,—hoping that this class of students will not fail to consider the larger part as merely postponed to a future period, and that they will also carefully study during their novitiate the whole of our volumes, that they may be the better qualified after they come to the bar to resume their studies with all due regard to method.

TITLE I.

MORAL AND POLITICAL PHILOSOPHY.

1. The Bible. 2. Cicero's Offices. 3. Beattie's Elements of Moral Science. [The chapters Psychology, Natural Theology, Moral Philosophy only.] 4. Paley's Moral Philosophy, the first five books. 5. Reid's Essays on the Mind. 6. Paley's Philosophy—sixth book. 7. Beattie's Elements 'Of Politics.' 7. Rutherford's Institutes. 8. Hoffman's Legal Outlines, omitting the 10th Lecture

TITLE II.

ELEMENTARY LAW OF ENGLAND, THE UNITED STATES, AND THE CIVIL LAW.

1. Introduction to Robertson's History of Charles V. 2. Hoffman's Legal Outlines, Lecture 10th, 'Of Feudal Law.'

3. Wright's Tenures. 4. Sullivan's Lectures. 5. Gilbert's Tenures. 6. Conversations on the English Constitution. 7. De Lolme on the English Constitution. 8. Blackstone's Commentaries. 9. Kent's Commentaries. 10. Rawle on the American Constitution. 11. Schomberg's Elements of the Civil Law.

TITLE III

REAL RIGHTS AND REAL REMEDIES.

1. Littleton's Tenures. 2. Coke upon Littleton. 3. Select chapters in Cruise's Digest, omitting *Jointure, Statute Merchant, Common, Offices, Franchises, Escheat, Prescription, Private Act, King's Grant*. [*Vide ante p. 174, &c.*] 4. Comyn's Analysis of Real Actions. 5. The 10th and 11th chapters of 3 Blackstone. 6. Select Cases in Coke's Reports. *Vide p. 183 to 211*. [The cases to be passed by, are so clearly marked, as to need no enumeration of those which are to be read by this third class of students.] 7. Miscellaneous [*Vide ante p. 212, and study No. 5, 6, 8, 10, 13, 14, 17*]

TITLE IV.

LAW OF PERSONAL RIGHTS AND REMEDIES.

1. Select chapters in Bacon's Abridgment. [*Vide ante p. 287, 288, 289, 290*—none of these selected chapters are to be omitted.] 2. Selwyn's N. Prius. 3. Sergeant on Attachment. 4. Babbington on Set-Off. 5. Ram on Legal Judgment. 6. Select Cases in Coke. [*Vide ante p. 294 to 320.*] 7. Miscellaneous. [*Vide ante 321*—study No. 2, 6, 8, 12, 16, 18, 19, 22.]

TITLE V.

LAW OF EQUITY.

1. Wooddeson's Lectures—Lecture 55. 2. Story's Commentaries on Equity Jurisprudence. 3. Barton's Suit in Equity.

4. Cooper's Equity Pleading. 5. Laussat's Essay on Equity in Pennsylvania.


TITLE VI

LEX MERCATORIA

1. Bacon's Abr. vol. iv. p. 595. 'Merchant and Merchandise.' 2. Abbot on Shipping. 3. Chitty on Bills. 4. Livermore on Agency. 5. Collyer on Partnership 6. Story on Bailments. 7 Miscellaneous. [*Vide ante p. 414*, no omissions.]

TITLE VII.

CRIMES AND PUNISHMENTS

1. Beccaria. 2. Eden 3 Bicheno 4 Russell 5 Carington 6. McNally 7. Archbold [*Vide ante p 424* —  Through inadvertence, the State Trials were not designated by e.—and are to be omitted in this third Course.]

TITLE VIII

LAW OF NATIONS

1. Mackintosh's Introductory Lecture. 2. Chitty's Law of Nations. 3. Martin's Law of Nations. 4 Vattel's Law of Nations. 5. Du Ponceau's Translation of part of Bynkershoek.

TITLE IX.

MARITIME AND ADMIRALTY LAW

1. Azuni. 2. Court of Admiralty, 1 vol Bac Abri 3 Brown's Admiralty Law. 4. De Lovio v Boit. 2 Gallison's Reports, p. 435 5. Jacobsen's Sea Laws.

TITLE X.

CIVIL OR ROMAN LAW.

1. Gibbon's 44th Chapter. 2. Butler's *Horæ Juridicæ*. 3. Ellis' Summary. 4. Burke's Historical Essay on the Laws of

Rome. 5. Hallifax's Analysis of the Civil Law. 6. Article I. vol. ii. of the London Law Magazine, p. 482 to 522. 7. Article III. vol. ii. of the American Jurist, p. 39 to 65.

TITLE XI.

CONSTITUTION AND LAWS OF THE U. S. OF AMERICA.

1. Story's Constitutional Class Book. 2. Dr. Wilson's Lectures, vol. i. chap. 8, 11. Vol. ii. chap. 1, 2, 3. 3. The Federalist. [If the student has not previously read Rawle on the Constitution, as directed in page 168, he will now add that work.]

TITLE XII.

CONSTITUTION AND LAWS OF THE SEVERAL STATES IN THE UNION.

1. Smith's Comparative View of the State Constitutions. 2. Griffith's Law Register. 3. The American Jurist, Title 'Legislation.'

TITLE XIII.

POLITICAL ECONOMY.

1. Priestley's Lectures on History and General Policy. 2. Marcet's Conversations on Political Economy. 3. Boileau's Introduction to the Study of P. E. 4. Joice's Analysis of Smith's Wealth of Nations. 5. Hamilton's Reports on a National Bank, on Public Credit, on the establishment of a Mint, on Manufactures.

AUXILIARY SUBJECTS.

DIVISION I.

CIVIL, STATISTICAL AND POLITICAL HISTORY OF THE UNITED STATES.

1. Marshall's Life of Washington. 2. Hubbard's History of New England. 3. Flint's History and Geography of the

Western States. 4 Pitkin's Political and Civil History of the United States. 5. Lyman's History of the Diplomacy of the United States. 6. Faine's Political Writings.

DIVISION II.

FORENSIC ELOQUENCE AND ORATORY.

1. Blair's Lectures, the following select chapters, 25, 26, 27, 28, 31, 32, 33, 34. 2. Hume's Essays, vol. i. Essay 12. 3. Rollin's Belles Lettres, vol. ii. 'Of the Eloquence of the Bar.' 4. Quintilian's Institutes of the Orator. 5. Cicero De Oratore. 6. Dialogue concerning Oratory. 7. Whateley's Elements of Rhetoric. 8 Lord Erskine's Speeches. 9. Introduction to Dr. Webster's Dictionary. 10. Pickering's Vocabulary of Americanisms.

DIVISION III.

LEGAL BIOGRAPHY AND BIBLIOGRAPHY.

[~~§~~ The Student of this third Course is referred to the General Division *ante p.* 622 to 665, which being carefully read, will enable him to make his own selections, and devote to this portion of his studies such attention as time and circumstances will permit.]

DIVISION IV.

LEGAL REVIEWS AND PERIODICALS.

[~~§~~ The student will perceive, after a careful perusal of this Division from p. 666 to 671, the importance we attach to this subject, and if he has read the Articles we have selected for him from the American Jurist, and the London Law Magazine, he will be the better able to judge for himself, and to make such selections as his time will enable him to read.]

DIVISION V

CODEFICATION AND AMENDMENT OF LAWS.

✍ A student of law before coming to the Bar, will have little occasion to devote much time to such a subject. We strongly urge upon him, however, a careful perusal of this Division, *ante p.* 672, and if to this he adds a few of the smaller Essays, he will have such a general acquaintance with this important topic as will enable him when at the bar, gradually to enlarge his views of law as a science, to perceive its beauties and defects, and justly to appreciate the plans suggested for their amendment.

DIVISION VI.

MEDICAL JURISPRUDENCE

[A slight acquaintance with this subject is essential to a student even on his first coming to the bar. We leave this matter wholly to his own judgment, after he has read our remarks and enumeration of works, *ante p.* 697.]

DIVISION VII.

MILITARY AND NAVAL LAW.

[The remarks made on several of the foregoing Divisions apply equally to the present. This subject, however, is strictly *legal*, and it behooves the student to regard this as an integral part of his Course, the principles of which he should not fail to treasure up before his admission to the bar.]

DIVISION VIII.

LOGIC.

[The student of this third Course will read this Division, *ante p.* 714, with care, and, if practicable, study before he

comes to the bar, the works of Kirwan and Whately, those being decidedly the best in the list we have given, *ante p. 719.*]

DIVISION IX.

PROFESSIONAL DEPARTMENT.

[Our student must not fail to give this subject his earnest attention before he comes to the bar. Let him carefully read the whole of this Division: and among the works recommended to him, *ante p. 724*, we mention as specially worthy of his regard, 1. The Proverbs, &c. of Solomon. 2. Burgh's Dignity of Human Nature. 3. Watts on the Mind. 4. The Life of a Lawyer. 5. The Twelfth Book of Quintilian. ¶ Should the student of this third Course, however, find time before he comes to the bar, to extend his reading under this head, even beyond the works we have *retained* for him, we recommend him to do so.]

FOURTH COURSE.

[¶ In respect to students of this Course we desire it to be distinctly understood that as it is designed for those alone who are to practise their profession in the country, that is out of the maritime cities, they adopt, at their choice, either of the three preceding courses, omitting, however, in the course selected by them, those *titles* and *works* which are designated by *. By this we design that they should strictly adapt their course of study to their probable wants. In courts out of maritime cities, the extensive subjects of *Admiralty* and *Maritime Law*, of the *Lex Mercatoria*, (with but few exceptions) and other integral portions of jurisprudence, seldom become the subject of litigation. The Roman Law, also, need not be so extensively studied; nor do questions even of constitutional

law, and those under the Acts of Congress, so often arise in country practice. The student of this course, whether of the first, second, or third class, will omit the following,—some of which, from accident, may not have been designated for omission by the customary mark *. Conkling's Practice in the United States Courts, *ante p.* 293. In Title VI. '*Lex Mercatoria*,' *ante p.* 410, omit Abbot on Shipping. Roccus. Lord Mansfield's Decisions on Insurance, Bottomry, &c. Fell on Mercantile Guarantees. Phillips on Insurance. Smith's Mercantile Law, Select Cases in Douglas, Burrow, Cranch, Wheaton, Peters, on the same law; and all the articles under the head of 'Miscellaneous.' In Title VIII. *p.* 447, '*Law of Nations*,' omit Martin, Bynkershoek, Schlegel, War in Disguise, Answer to same, Baring's Inquiry, Lord Liverpool's Discourse, Examination of the British Doctrine as to Neutral Trade. Title IX. *p.* 458. '*Admiralty and Maritime Law*,' this student will omit the *whole* title, sufficient having been read by him under the *Elementary Titles of the Course*. In Title X. '*Civil or Roman Law*,' this student will omit Bever, Ferriere, Dupin, Spence, Brown, Domat, Pothier, selections from the Digest and Code; selections from Pothier's *Pandectæ*; Wilde, Irving, Reddie, Brown, Pothier's Notitia, and Butler's Memoir of D'Aguesseau,—care being taken, however, to study with care the Elementary works, recommended in page 134, and those designated for perusal in page 478, &c. The Roman Civil Law, to a certain extent, is quite as essential to country practitioners, as to others; and with this view we have endeavoured to make the selection on this head as much adapted to their probable wants as was practicable.

The student of this Fourth Course will perceive that we have omitted nothing in Title XI. '*Constitution and Laws of*

the United States—for though in country practice, questions under the constitution and laws of the general government, certainly do not as frequently arise as in the maritime cities, he will bear in mind how often in our country, the profession of a practising lawyer is united with that of legislator and statesman,—and how essential in such case, is a thorough knowledge of the entire system of United States jurisprudence. We therefore recommend, to all students and lawyers who have not absolutely abjured the connection, to study under this head, at least to the extent we have designated, it being no more than is essential to every well read lawyer. And finally, all of the remaining Titles and Divisions remain for this student unaltered, being the same as in the other mentioned courses.]

AUTHOR'S FAREWELL TO THE STUDENT.

We cannot better take leave of our student than in the language of the kind exhortation of Justinian.—*‘Summâ itaque ope, et alacri studio, has leges nostras accipite: et vosmetipsos sic eruditos ostendite, ut spes vos pulcherrima foveat, toto legitimo opere perfecto, posse etiam nostram rempublicam in partibus ejus vobis credendis, gubernari.’** And finally, in the quaint, but expressive and paternal words of Lord Coke,—*‘FAREWELL. WE WISH UNTO THEE THE GLAD-SOME LIGHT OF JURISPRUDENCE, THE LOVELINESS OF TEMPERANCE, THE STABILITY OF FORTITUDE, AND THE SOLIDITY OF JUSTICE.’†*

* Justinian's Proem to the Institutes, sec vii

† Coke's Commentary upon Littleton, p 395

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